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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-6027

RAYMOND WOOD, EDNA ALLEN, and
JAMES TANTE,

Petitioners,

vs.

THE STATE OF GEORGIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE

GEORGIA COURT OF APPEALS

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Atlanta, Georgia 30303
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. _____

RAYMOND WOOD, EDNA ALLEN, and JAMES TANTE,

Petitioners,

vs.

THE STATE OF GEORGIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE
GEORGIA COURT OF APPEALS

Petitioners pray that a Writ of Certiorari issue to to review the opinion and judgment of the Georgia Court of Appeals entered in the above case on June 5, 1979.

OPINION BELOW

The opinion of the Georgia Court of Appeals is reported at 150 Ga. App. 582, 258 S.E. 2d 171 (1979), and is set forth in Appendix "A".

JURISDICTION

The Judgement of the Georgia Court of Appeals was entered on June 5, 1979. An Application for rehearing was timely filed and denied on July 6, 1979. Copy of said denial is set forth in Appendix "B" hereto. Thereafter, the Supreme Court of Georgia denied a timely filed Petition for Writ of Certiorari on September 4, 1979. Copy of said denial is set for th herein in Appendix "C". Mr. Justice Powell granted an extension of time to and including February 1, 1980 within which to file this Petition. The Court's jurisdiction is invoked under Title 28, United States Code §1257 (3).

QUESTIONS PRESENTED

Once a State Court has determined that probation is the appropriate punishment for a particular offender, and also imposes a fine to be paid on installments during the probationary period, may it, consistently with the Equal Protection and Due Process clauses of the Fourteenth Amendment, revoke the probation of the offender for failure to pay the installments as directed where the evidence established that the offender was indigent and that the offender was not negligent in any manner, and did not deliberately disburse or dissipate monies that resulted in his inability to pay?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Fourteenth Amendment to the United States Constitution as well as Georgia Code Annotated 27-2901, are set forth in Appendix "D" hereto.

STATEMENT OF THE CASE

Petitioners were placed on probation after being convicted of distribution of obscene materials. Their cases are reported at 144 Ga. App. 236, 240 S.E. 2d.743 (1977), and 144 Ga. App. 233, 240 S.E. 2d. 754 (1977). Wood received a ten thousand ($10,000.00) dollar fine and twelve (12) months on probation on each of two (2) counts to run consecutively. Tante and Allen each received a five thousand ($5,000.00) dollar fine and twelve (12) months on probation.

The remittiturs were made the judgment of the trial court on October 23, 1978. (R-20, 21, 22). The trial judge in each probation order, as a condition required each appellant to pay five hundred ($500.00) dollars per month until the fine was paid. (R-23, 24, 25).

Thereafter, on January 12, 1979, or approximately 2 1/2 months after being placed on probation, a petition for revocation of probation was filed against each Petitioner and the sole ground for revoking the probation was that the Petitioner failed to pay as directed. (R-26, 27, 28.)

A hearing was held on January 26, 1979. Jacqueline L. Tomlin, Edna Allen's probation officer, testified that the Petitioner was on unemployment compensation, and that Allen had not paid the $500.00 per month and had no idea how she would raise the fine money. (T-4-6). Upon questioning by her Counsel, Allen testified that she receives $64.00 per week or about $250.00 per month, and has no other assets or sources of income. (T-7) Allen is presently having eye trouble, is 54 years of age, and has been turned down for employment. (T-8, 9, 24, 25) She borrowed money to pay for her eye glasses, and has no money left over, after paying expenses, to pay on her fine. (T-9-11)

Gene Odum, James Tante' probation officer, testified that Tante had complied with the conditions of probation except paying the $500.00 per month on the fine. Tante told Odum that his employer was supposed to pay the fine, and that he was on a very tight budget. (T-23, 33) Tante testified he worked for the State of Georgia as a correctional officer. (T-33) His gross income is $540.00 per month, and he has no other property or income. (T-35) His net pay is $516.00 per month, and he had nothing left over in November and December to pay on the fine. (T-37).

Tante is 60 years of age, and was unemployed for eight months, and was on unemployment before he obtained his present job. (T-38-40)

Dixon E. Nash, Raymond Wood's probation officer, testified that Wood had not paid the fine as directed. Wood had been terminated from his prior employment, and just started a new job. His gross income is $120.00 per week at his new job. (T-53). Wood's net pay was about $155.00 after deductions on his old job, and he had no money left over to pay his fine. Also, he is the sole support of his wife and three children. (T-54, 55)

The Court issued an order revoking the probation of all three Petitioners on the sole ground that each Petitioner violated the terms of probation by not paying the fine as directed, being $500.00 per month or $1500.00 for 3 months. (R-29-34) (R-37,38,39).

REASON FOR GRANTING THE WRIT

I.

This Case Presents For Review An Issue Expressly Reserved By This Court In Tate vs. Short, 401 U.S. 395 (1971) and Williams vs. Illinois, 399 U.S. 235 (1970) - The Imprisonment of The Defendant For Failure To Pay A Fine On Installments Due To His Indigency After Being Placed On Probation.

In Tate vs. Short, 401 U.S. 395, 400 (1971), this Court stated that"

"...Nor is our decision to be understood as precluding imprisonment as an enforcement method when alternative means are unsuccessful despite the defendant's reasonable efforts to satisfy the fines by those means; the determination of the constitutionality of imprisonment in that circumstance must await the presentation of a concrete case."

In Williams vs. Illinois, 399 U.S. 235, 243 (1970), this court stated that:

"... We have no occasion to reach the question whether a State is precluded in any other circumstances from holding an indigent accountable for a fine by use of a penal sanction..."

This case appears to be the concrete case mentioned in Tate vs. Short, supra.

The Georgia Court of Appeals in Wood, et al. vs. State, supra, held that:

"At the revocation hearing, it was established that none of the appellants had the financial resources to make the payments..."

In Tate vs. Short, supra, this Court struck a sentence that converted a fine into imprisonment due to the indigency of the defendant. Similarly in Williams vs. Illinois, supra, it was held that the term of imprisonment for an offense could not be extended beyond the maximum period fixed by law resulting directly from an involuntary nonpayment of a fine or court costs.

The fundamental question boils down to whether the sort of sentence an offender must serve may ever explicitly turn solely upon the amount of money he has. Griffin vs. Illinois, 351 U.S. 12, 19 (1956).

It is now clear that the conditional liberty of an offender who has been awarded probation is part of the liberty

directly secured by the Fourteenth Amendment. Morrisey vs. Brewer, 408 U.S. 471 (1972); Gagnon vs. Scarpelli, 411 U.S. 617 (1973).

The evidence showed that the installment payment of $500.00 per month on the fine was more than Wood and Allen made in a month. Tante's net pay was $516.00 a month. On these facts, the alternative offered the petitioners was, in effect, a nullity.

There is no "inverse discrimination" that is mentioned in Williams vs. Illinois, supra, and Tate vs. Short, supra, since the petitioners were serving their sentence on probation. They were reporting to their probation officers and were complying with the terms and conditions of their probation. They were, in essence, serving their sentence.

It should be pointed out that the fine is a judgment against the defendant, and the State can always levy against any property the defendant may own at a later time. Also, the State may file a garnishment against the salary of the defendant in order to collect the fine. Therefore, the petitioners are subject to paying the fine at a later time, and even after the probation period is over.

II.

There Is A Conflict Between the Federal Courts And The State Courts.

Recently in U.S. vs. Boswell, 605 F. 2d. 171, (1979, 5th Cir.), the Court held that a revocation of probation was erroneous if the defendant did not have the resources available, had no way to acquire them, and was not negligent or deliberate in allowing funds that he had to be disbursed or dissipated in a manner that resulted in his inability to pay.

Similarly in U.S. vs. Taylor, 321 F. 2d. 339 (1963, 4th Cir.), the court held that if the defendant was too poor to pay the fines, was not to blame for it, and was sincere in trying to pay the fines, his probation should not be revoked.

The applicable law is stated in U.S. vs. Savage, 440 F. 2d 1237, 1239 (1971, 5th Cir.) that a defandant:

"...can not be held to be in violation of the condition (of his parole) unless he is clearly at fault." See also Hensley vs. U.S., 257 F. 2d 681 (1958, 5th Cir.).

The above cited federal cases clearly reflect that in order to revoke the probation of the defendant, he must be negligent in not paying the installment payments, or willfully refuses to pay the fine.

Georgia refuses to follow the Fourth and Fifth Circuits and holds that probation can be revoked solely because of the indigency of the defendant.

This conflict should be resolved and this case is the proper case for this court to provide a uniform rule of law for the United States.

The Petitioners have not been negligent, and have not surrendered a fair opportunity to make the required installment payments.

To imprison the Petitioners when in the same circumstances a person of means would remain free constitutes a denial of the equal protection of the law. The confinement results from failure to pay a fine on installments being directly converted into imprisonment. The defendant who is involuntarily unable to pay is subjected to imprisonment solely because of his indigency.

The trial court has determined that the Petitioners need not be confined for their crimes and that the State's penal interests would be met by a fine to be paid in installments and probation. (See Ga. Code Ann. §27-2901) This is an individualized sentence and the Petitioners certainly have no quarrel with the court's essential judgment. But to revoke the probation due to their indigency is irrational, unnecassary, and impermissibly barred them from the benefits which the court adjudged them worthy of. This violates due process of law.

The State must accomodate their indigency and permit them the same escape from confinement open to a defendant of means under the same sentence. It cannot offer probation only to those who can pay.

Whether a person can pay a fine on installments has no apparent relationship to punishment or to rehabilitation.

Wood was a mere clerk in a bookstore; Allen was a mere ticket taker in a theater; and Tant was a mere projectionist in a theater. The imposition of substantial fines on this type of person can only result in the revoking of the probation sooner or later. The trial court was fully aware of the financial situation of the Petitioners when he imposed the sentences.

If the probation sentence can be revoked in this case, then the probation sentence was illusory and amounted to the trial judge giving the three Petitioners a test of liberty for three (3) months, but in effect was really giving them a sentence to serve in prison. Under the holdings of Morrisey vs. Brewer, supra, the State court is required to keep the Petitioners on probation as they were clealy not at fault in failing to comply with the terms of probation.

Since we have a national constitution , the application of the constitution should be uniform in both the state and federal courts.

CONCLUSION

The Georgia Court of Appeals relied on Hunter vs. Dean, 240 Ga. 214, 239 S.E. 2d 791 (1977) in upholding the trial court's decision. Hunter vs. Dean is based on Barnett vs. Hopper, 234 Ga. 692, 217 S.E. 2d 208 (1975). Subsequently that judgment was reversed in Barnett vs. Hopper, 548 F. 2d 550 (1977, 5th Cir.). This Court granted certiorari in Hopper vs. Barnett, ___ U.S.___, 58 L.Ed. 2d 701 (Dec. 11, 1978) and vacated the judgment of the Fifty Circuit on the grounds of mootness. In both Dean and Barnett, the sentence required payment of a fine in a lump sum before the defendant could be placed on probation. It therefore appears that a Writ of Certiorari should be granted based on this Court vacating the Fifth Circuit's ruling in Hopper vs. Barnett, and Hunter vs. Dean, supra, being based on Barnett vs. Hopper, 234 Ga. 692, 217 S.E. 2d 208 (1975).

GLENN ZELL, P.C.

Suite 620
66 Luckie Street, N.W.
Atlanta, Georgia 30303

JUN 5 1979

Appendix "A"

57867. WOOD (RAYMOND) et al. v. THE STATE. Ba-102

BANKE, Judge.

Each of the three appellants was convicted of distributing obscene materials and each was sentenced to pay a fine and to serve 12 months on probation. Following the affirmance of these convictions on appeal, the trial court entered probation orders requiring each appellant to make payments of $500 per month towards payment of his or her fine as a condition of probation. Thereafter, each appellant's probation was revoked for failure to make the $500 payments as directed.

At the revocation hearing, it was established that none of the appellants had the financial resources to make the payments. On appeal, the appellants contend that to revoke their probation under these circumstances amounts to imprisoning them for their indigency, in violation of their rights under the Fourteenth Amendment of the United States Constitution. They further contend that the trial court was without authority under Georgia law to require payment of the fines as a condition of probation. Held:

1. In Hunter v. Dean, 240 Ga. 214 (239 SE2d 791) (1977), a requirement that a defendant pay a fine as a condition precedent to serving a sentence on probation was

held not to violate the equal protection or due process provisions of the United States Constitution, even "when the defendant is indigent and unable to make immediate payment of the fine." See generally Code Ann. § 27-2709. The appellants contend that while this may be the law where payment of the fine is required as a condition precedent to probation, the situation is different where payment of the fine is required as a condition of the probation itself. We are unable to accord this delicate distinction the weight which the appellants seek to give it. In our view, Hunter controls this case and requires the affirmance of the trial court's ruling.

2. The fact that Code Ann. 27-2711 does not list payment of a validly imposed fine as one of the permissible conditions of probation does not require a different result. It is well settled that the conditions enumerated in that section are not exclusive, but the court may impose other requirements not specifically listed therein. See George v. State, 99 Ga. App. 892, 893 (109 SE2d 883) (1959); Gay v. State, 101 Ga. App. 225 (1) (113 SE2d 223) (1960).

Judgment affirmed. McMurray, P. J., and Underwood, J., concur.

Appendix "B"

Court of Appeals of the State of Georgia

ATLANTA, July 6, 1979

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

57867. Raymond Wood et al. v. The State

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

CLERK'S OFFICE, ATLANTA JUL -6 1979

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Morgan Thomas

CLERK.

Appendix "C"

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

Atlanta Sept 4, 1979

Dear Sir:

Case No. 35427. Raymond, Edna Allen & James Wood et al v. The State

The Supreme Court today denied the writ of certiorari in this case.

All the justices concur, except Nell, J., who dissents

Very truly yours,

MRS. JOLINE B. WILLIAMS, Clerk

APPENDIX

Supreme Court, U. S.
FILED
JUN 30 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-6027

RAYMOND WOOD, ET AL, PETITIONERS

v.

GEORGIA, RESPONDENT

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

PETITION FOR CERTIORARI FILED FEBRUARY 1, 1980
CERTIORARI GRANTED MAY 19, 1980

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SUMMARY OF RELEVANT DOCKET ENTRIES

Date	*Description of Document or Proceeding*
6/23/76	Accusation (2 counts) Edna Allen
6/23/76	Accusation (2 counts) James Tante
9/3/76	Accusation (2 counts) Raymond Wood
3/15/77	Verdict of the Jury-Edna Allen
3/15/77	Verdict of the Jury-James Tante
3/17/77	Verdict of the Jury-Raymond Wood
3/18/77	Sentence-Edna Allen
3/18/77	Sentence-James Tante
3/18/77	Sentence-Raymond Wood
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1/16/79	Petition For Revocation of Probation-Raymond Wood
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2/8/79	Order on Probation Hearing-James Tante
2/8/79	Order on Probation Hearing-Raymond Wood
2/13/79	Joint Motions To Modify Conditions Of Probation And Order
2/13/79	Order of Revocation-Edna Allen
2/13/79	Order of Revocation-James Tante
2/13/79	Order of Revocation-Raymond Wood

STATE COURT OF FULTON COUNTY

STATE OF GEORGIA, FULTON COUNTY

Came in person before me I.W. Brown who, being duly sworn, deposes and says on oath that from the best of his knowledge and belief Edna Allen is guilty of the offense of MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE, in that the said accused in the County of Fulton, on the 24th day of February 1976, did commit the offense of distributing obscene materials in violation of Georgia Code Annotated Section 26-2101 in that the accused did, knowing the obscene nature thereof, exhibit a motion picture film entitled "Cheryl's Surrender" which film:

1. taken as a whole, to the average person, applying contemporary community standards predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion and,

2. taken as a whole, lacks serious literary, artistic, political or scientific value and,

3. depicts or describes in a patently offensive way, the following acts, to wit: acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated, Contrary to Law,

COUNT # 2: I, I.W. Brown in the name and behalf of the citizens of Georgia, charge and accuse Edna Allen with the offense of Misdemeanor of a high and aggravated nature, for that the said accused in the County aforesaid, on the 24th day of February, 1976 did commit the offense of distributing obscene materials in violation of Georgia Code Annotated Section 26-2101 in that the accused did, knowing the obscene nature thereof, exhibit a motion picture film entitled "Sex Before Marriage" which film:

1. taken as a whole, to the average person, applying contemporary community standards predominately appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion and,

2. taken as a whole, lacks serious literary, artistic, political or scientific value and,

3. depicts or described in a patently offensive way, the following acts, to wit: acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated,

STATE COURT OF FULTON COUNTY

STATE OF GEORGIA, FULTON COUNTY

Came in person before me I.W. Brown who, being duly sworn, deposes and says on oath that from the best of his knowledge and belief Jim Tante is guilty of the offense of MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE, in that the said accused in the County of Fulton on the 24th day of February 1976 did commit the offense of distributing obscene materials in violation of Georgia Code Annotated Section 26-2101 in that the accused did, knowing the obscene nature thereof, exhibit a motion picture film entitled, "Cheryl's Surrender" which film:

1. taken as a whole, to the average person, applying contemporary community standards predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion and,

2. taken as a whole, lacks serious literary, artistic, political or scientific value and,

3. depicts or describes in a patently offensive way, the following acts, to wit: acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated, Contrary to Law,

COUNT #2: I, I.W. Brown in the name and behalf of the citizens of Georgia, charge and accuse Jim Tante with the offense of Misdemeanor of a high and aggravated nature, for that the said accused in the County aforesaid, on the 24th day of February, 1976, did commit the offense of distributing obscene materials in violation of Georgia Code Annotated Section 26-2101 in that the accused did, knowing the obscene nature thereof, exhibit a motion picture film entitled, "Sex Before Marriage" which film:

1. taken as a whole, to the average person, applying contemporary community standards predominately appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion and,

2. taken as a whole, lacks serious literary, artistic, political or scientific value and,

3. depicts or describes in a patently offensive way, the following acts, to wit: acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated,

STATE COURT OF FULTON COUNTY

STATE OF GEORGIA, FULTON COUNTY

I, I.W. Brown in the name and behalf of the citizens of Georgia, charge and accuse Raymond Wood with the offense of MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE, for that the said accused in the County aforesaid, on the 4th day of June 1976, did commit the violation of distributing obscene material in violation of Georgia Code Annotated Section 26-2101 in that the accused did, knowing the obscene nature thereof, sell to a person obscene material, to wit: a magazine entitled, "Little Girls Fuck Too!" which magazine:

1. taken as a whole, to the average person, applying contemporary community standards, predominately appeals to the prurient interest, that is a shameful or morbid interest in nudity, sex or excretion and

2. taken as a whole, lacks serious literary, artistic, political or scientific value, and

3. depicts or describes in a patently offensive way the following acts, to wit: acts of masturbation and acts involving lewd exhibition of the genitals, Contrary to Law,

COUNT #2: I, I.W. Brown in the name and behalf of the citizens of Georgia, charge and accuse Raymond Wood with the offense of Misdemeanor of a High and Aggravated Nature, for that the said accused in the County aforesaid, on the 4th day of June, 1976 did commit the violation of distributing obscene material in violation of Georgia Code Annotated Section 26-2101 in that the accused did, knowing the obscene nature thereof, sell to a person obscene material, to wit: a magazine entitled, "Torrid Tots," which magazine:

1. taken as a whole, to the average person, applying contemporary community standards, predominately appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and,

2. taken as a whole, lacks serious literary, artistic, political or scientific value, and,

3. depicts or describes in a patently offensive way, the following acts, to wit: acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated and acts involving lewd exhibition of the genitals,

NAMES OF WITNESSES

I, W. Brown, Solicitor's office
Room 51, Criminal Court Fulton Co.

Jerry Baxter, D. A.s Office

Ticket	Warrant	Set on ____
5	000 +	By order of ____
		2 mos

PROBATED

No. 10,000

Criminal Court of Fulton County

5,000 A Bond — National Stand 5-4-77

JUNE Term, 19 76

THE STATE
VERSUS

MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE
DISTRIBUTING OBSCENE MATERIAL (2 cts.)

EDNA ALLEN
905 Brewery St., N. E.

D.L.No.	Race	Age	Sex
	W	51	F

Fingerprint Number 5837

Criminal Court Fulton County

March Term, 1977

The Defendant in the within Accusation waives arraignment, list of witnesses, benefit of counsel, copy of accusation and pleads Not Guilty. This 15 day of March 1977.

Leonard W. Pharr Jr.
Solicitor.

Defendant's Attorney.

We, the Jury, find the defendant guilty as charged on both counts

Date March 15, 1977

Marion A Epstein
Judge—Foreman.

____ Fine Paid

____ Deputy Sheriff

C. Lee Zell Defendant's Attorney

____ Prosecutor's Attorney

Reset to ____, 19__, By order Judge ____
Reset to ____, 19__, By order Judge ____
Reset to ____, 19__, By order Judge ____

Set with Jim Tante
Special Instructions Redrawn from #161662

I. W. Brown Prosecutor

HINSON McAULIFFE, Solicitor General

Calendar Date and Number	
3/4 1	3/16 2

NAMES OF WITNESSES

I. W. Brown, Solicitor's Office
Room 51, Criminal Court Fulton Co.

Jerry Baxter, D. A.s office

Criminal Court Fulton County

March Term, 1977

The Defendant in the within Accusation waives arraignment, list of witnesses, benefit of counsel, copy of accusation and pleads NOT Guilty. This 17 day of March, 1977

Edmond W. Brodie
Solicitor.

Glenn Zell
Defendant's Attorney.

We, the Jury, find the defendant Guilty as charged on both counts

Date March 15, 1977

Maxine C. Epstein
Judge—Foreman.

A-1

Docket	Warrant	Set on ____ By order of ____
5	000 + 12 mos	

No. 164314

Criminal Court of Fulton County

5,000 P Bd
King JUNE

Term, 19

THE STATE
VERSUS

MISDEMEANOR
OF A HIGH AND
AGGRAVATED
NATURE
DISTRIBUTING
OBSCENE
MATERIAL

N/A/A Norcross Divor Trust
JIM TANTE
233 East 3rd St. Jackson, La.

	Race	Age	Sex (2 CTS)
D.L.No.	W	57	M
Fingerprint Number		6597	

_____ Fine Paid

_____ Deputy Sheriff

Glenn Zell
Glenn Zell
_____ Defendant's Attorney

_____ Prosecutor's Attorney

Reset to _____, 19__ By order Judge _____
Reset to _____, 19__ By order Judge _____
Reset to _____, 19__ By order Judge _____

Set with Leon Allen
Special Instructions _____
PROBATION FROM 161693

I. W. Brown
_____ Prosecutor 5/23

HINSON McAULIFFE, Solicitor General 41

Calendar Date and Number				43
8/4 3	11/2 2	3/14 2	5/2 1	2

NAMES OF WITNESSES

I. W. Brown, Solicitor's Office

J. B. Drummond, City officer
J. T. Cochran

~~Fred Crawford~~
~~2501 Grove, Drop N. E.~~
~~696-4980~~

Criminal Court Fulton County

MARCH Term, 1977

The Defendant in the within Accusation waives arraignment, list of witnesses, benefit of counsel, copy of accusation and pleads NOT Guilty. This 16th day of March, 1977

Solicitor.

Defendant's Attorney.

We, the Jury, find the defendant Guilty on both Counts 1 & 2.

Date 3/17/77

Foreman

A-14

Ticket	Warrant	Set on
CT	1 - 5,000	12 months
CT	2 - 5,000	12 months

166355

Criminal Court of Fulton County

10,000 A Bond
King

SEPTEMBER Term, 19

THE STATE
VERSUS

MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE (CONTAINING ~~PROBATE~~ MATERIAL)

RAYMOND WOOD
609 Federal Terrace

	Race	Age	Sex
D.L.No.	W	42	M
Fingerprint Number	78716		

Fine Paid

Deputy Sheriff

Defendant's Attorney

Prosecutor's Attorney

Reset to ____, 19__, By order Judge ____
Reset to ____, 19__, By order Judge ____
Reset to ____, 19__, By order Judge ____

Set with 163803 (A-10) (Terry Brooks)

Special Instructions

I. W. Brown
Prosecutor

HINSON McAULIFFE, Solicitor General

Date and Number			
11/2	3/17	2/3	3/23
16	12	3	62

CRIMINAL COURT OF FULTON COUNTY

CASE NO. 164312

STATE OF GEORGIA

v.

EDNA ALLEN

Whereas the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
(√) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) be confined for a term of twelve months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.

( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

(√) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of _____ months.

( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.

( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This 18 day of March 1977.

/s/ _____

WILLIAM H. ALEXANDER
Judge, Criminal Court of Fulton County

CRIMINAL COURT OF FULTON COUNTY

STATE OF GEORGIA

v.

EDNA ALLEN

Whereas the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
(√) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) pay a fine of five thousand dollars and be confined for a term of twelve months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.

( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

(√) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be fined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of ___ months.

( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.

( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This 18 day of March, 1977.

/s/ _____

WILLIAM H. ALEXANDER
Judge, Criminal Court of Fulton County

CRIMINAL COURT OF FULTON COUNTY

STATE OF GEORGIA

v.

JIM TANTE

Whereas the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
(√) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) pay a fine of five thousand dollars and be confined for a term of twelve months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.

( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

(√) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of ___ months.

( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.

( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This 18 day of March, 1977.

/s/ _____
WILLIAM H. ALEXANDER
Judge, Criminal Court of Fulton County

CRIMINAL COURT OF FULTON COUNTY

CASE NO. 164314

STATE OF GEORGIA

v.

JIM TANTE

Whereas the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
(√) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) be confined for a term of twelve months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.
( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.
(√) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of ___months.
( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.
( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This 18 day of March, 1977.

/s/ _____
WILLIAM H. ALEXANDER
Judge, Criminal Court of Fulton County

CRIMINAL COURT OF FULTON COUNTY

STATE OF GEORGIA

v.

RAYMOND WOOD

Whereas the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
(√) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) pay a fine of five thousand dollars and be confined for a term of twelve months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.

( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

(√) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of ___ months.

( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.

( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This 18 day of March, 1977.

/s/ _____

WILLIAM H. ALEXANDER
Judge, Criminal Court of Fulton County

CRIMINAL COURT OF FULTON COUNTY

CASE NO. 166388

STATE OF GEORGIA

v.

RAYMOND WOOD

Whereas the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
(√) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) pay a fine of five thousand dollars and be confined for a term of twelve months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.

( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

(√) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of ___months.

( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.

( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This 18 day of March, 1977.

/s/ _____
WILLIAM H. ALEXANDER
Judge, Criminal Court of Fulton County

ORDER OF PROBATION

Docket No. 164312

STATE OF GEORGIA

v.

EDNA ALLEN

STATE OF GEORGIA
COUNTY OF FULTON
IN THE STATE COURT

Whereas the above-named defendant has pleaded guilty (been convicted of) the offense of DISTRIBUTING OBSCENE MATERIAL (TWO COUNTS) and is hereby sentenced to ___ months in the ___ county jail, and in the Public Works Camp or at such other penal institution as the Director of Corrections may direct for

Count 1—
Twelve (12) months, $5,000.00 fine and probated.
Count 2—
Twelve (12) months, and probated, concurrent.

The Court having examined the cause, it is ordered, adjudged, and decreed that the said sentence is hereby suspended and that the said defendant is placed on probation on this date for a period of Twelve (12) months.

It is the Order of the Court that the probationer comply with the following general and special conditions of probation:

(1) Be of general good behavior, avoiding narcotics and excessive use of alcoholic beverages.

(2) Associate with people of reputable character and avoid places of bad reputation.

(3) Report to the Probation Officer as directed. Monthly

(4) Permit such officer to visit him (her) at home or elsewhere.

(5) Work faithfully at suitable employment insofar as may be possible.

(6) Notify your Probation Officer immediately of any change of your address. Prior permission must be obtained to move outside the jurisdiction of the Court or leave the State for any period of time.

(7) Make reparation or restitution to any aggrieved person for the damage or loss caused by his (her) offense in the amount to be determined by the Court.

(8) Support his (her) legal dependents to the best of his (her) ability.

(9) Violate no penal laws of any State or the Federal Government.

It is further ordered by the Court that the defendant pay as specified:

A fine of $5,000.00 is payable through the Adult Probation Office at the rate of $500.00 monthly until paid in full.

Other special conditions ordered by the Court are as follows: Defendant having been on Appeal bond since March 18, 1977, probation is to begin October 23, 1978.

It is the further order of the Court and the defendant is hereby advised that the Court may at any time revoke or modify any conditions of this probation or change the period of probation and may discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law.

Ordered at Atlanta, Ga., this the 23rd day of October 1978.

This certifies that I completely understand the meaning of this order of probation and the foregoing conditions of probation.

/s/ _____

EDNA ALLEN
Signature of Probationer

/s/ _____

JOHN L. MASK
Probation Officer

November 1, 1978

/s/ _____

Judge Presiding

WILLIAM H. ALEXANDER
Judge, State Court of Fulton County

ORDER OF PROBATION

Docket No. 164314

STATE OF GEORGIA

v.

JIM TANTE AKA NORVELL OLIVER TANTE, DEFENDANT

STATE OF GEORGIA
COUNTY OF FULTON
IN THE STATE COURT

Whereas the above-named defendant has (been convicted of) the offense of MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE, DISTRIBUTING OBSCENE MATERIAL (2 cts.). and is hereby sentenced to ___ months in the ___ county jail, and in the Public Works Camp or at such other penal institution as the Director of Corrections may direct for

Ct. 1—twelve (12) months, $5000 fine, and probated;

Ct. 2—twelve (12) months and probated.

The Court having examined the cause, it is ordered, adjudged, and decreed that the said sentence is hereby suspended and that the said defendant is placed on probation on this date for a period of twelve (12) months.

It is the Order of the Court that the probationer comply with the following general and special conditions of probation:

(1) Be of general good behavior, avoiding narcotics and excessive use of alcoholic beverages.

(2) Associate with people of reputable character and avoid places of bad reputation.

(3) Report to the Probation Officer as directed. monthly.

(4) Permit such officer to visit him (her) at home or elsewhere.

(5) Work faithfully at suitable employment insofar as may be possible.

(6) Notify your Probation Officer immediately of any change of your address. Prior permission must be obtained to move outside the jurisdiction of the Court or leave the State for any period of time.

(7) Make reparation or restitution to any aggrieved person for the damage or loss caused by his (her) offense in the amount to be determined by the Court.

(8) Support his (her) legal dependents to the best of his (her) ability.

(9) Violate no penal laws of any State or the Federal Government.

It is further ordered by the Court that the defendant pay as specified:

A fine of $5000 payable through the Adult Probation Office at a rate of $500 monthly until paid in full.

Other special conditions ordered by the Court are as follows: Defendant having been on Appeal Bond since March 18, 1977, probation is to begin October 23, 1978.

It is the further order of the Court and the defendant is hereby advised that the Court may at any time revoke or modify any conditions of this probation or change the period of probation and may discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law.

Ordered at Atlanta Ga., this the 23rd day of October 1978

This certifies that I completely understand the meaning of this order of probation and the foregoing conditions of probation.

/s/ _____
NORVELL O. TANTE
Signature of Probationer

/s/ _____
DAVID E. ODOM
Probation Officer

November 1, 1978

/s/ _____
Judge Presiding
WILLIAM H. ALEXANDER,
Judge, State Court of Fulton County

ORDER OF PROBATION

Docket No. 166388

STATE OF GEORGIA

v.

RAYMOND WOOD, DEFENDANT

STATE OF GEORGIA
COUNTY OF FULTON
IN THE STATE COURT

Whereas the above named defendant has (been convicted of) the offense of DISTRIBUTING OBSCENE MATERIAL (MHAN) and is hereby sentenced to ___ months in the ___ county jail, and in the Public Works Camp or at such other penal institution as the Director of Corrections may direct for ___

Count 1—Twelve (12) months, $5,000.00 fine, and probated.

Count 2—Twelve (12) months, $5,000.00 fine, and probated to follow Ct. 1.

The Court having examined the cause, it is ordered, adjudged, and decreed that the said sentence is hereby suspended and that the said defendant is placed on probation on this date for a period of twenty-four (24) months.

It is the Order of the Court that the probationer comply with the following general and special conditions of probation:

(1) Be of general good behavior, avoiding narcotics and excessive use of alcoholic beverages.

(2) Associate with people of reputable character and avoid places of bad reputation.

(3) Report to the Probation Officer as directed. monthly

(4) Permit such officer to visit him (her) at home or elsewhere.

(5) Work faithfully at suitable employment insofar as may be possible.

(6) Notify your Probation Officer immediately of any change of your address. Prior permission must be obtained to move outside the jurisdiction of the Court or leave the State for any period of time.

(7) Make reparation or restitution to any aggrieved person for the damage or loss caused by his (her) offense in the amount to be determined by the Court.

(8) Support his (her) legal dependents to the best of his (her) ability.

(9) Violate no penal laws of any State or the Federal Government.

It is further ordered by the Court that the Defendant pay as specified:

Fines totalling to $10,000.00 payable through the Adult Probation Department at a rate of $500.00 monthly until paid in full.

Other special conditions ordered by the Court are as follows: Defendant having been on appeal bond since March 18, 1977, probation to begin October 23, 1978.

It is the further order of the Court and the defendant is hereby advised that the Court may at any time revoke or modify any conditions of this probation or change the period of probation and may discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law.

Ordered at Atlanta Ga., this the 23rd day of October 1978.

This certifies that I completely understand the meaning of this order of probation and the foregoing conditions of probation.

/s/ _____
RAYMOND L. WOOD
Signature of Probationer

/s/ _____
R. R. WILLINHAM
Probation Officer

November 1, 1978

/s/ _____
Judge Presiding
WILLIAM H. ALEXANDER,
Judge, State Court of Fulton County

PETITION FOR REVOCATION OF PROBATION
STATE COURT OF FULTON COUNTY

Docket No. 164312

JANUARY TERM, 1979

THE STATE

v.

EDNA ALLEN

NOW COMES JACQUELINE L. TUMLIN PROBATION OFFICER OF FULTON COUNTY, in the name and behalf of the State of Georgia and brings this action against EDNA ALLEN.

I.

That the Defendant (was convicted of) the offense of DISTRIBUTING OBSCENE MATERIALS (TWO COUNTS) at the September Term, 1978.

II.

That this Court, on the 23rd day of October, 1978, did sentence the Defendant to serve as follows:

Count 1—Twelve (12) months, $5,000.00 fine and probated.

Count 2—Twelve (12) months, and probated, concurrent.

III.

That the Defendant has violated the terms and conditions of probation in the following particulars: having failed to pay as directed by the Court.

IV.

WHEREFORE, the State of Georgia prays that the citation for revocation of probation be served on the Defendant and that the Defendant be directed to appear before this Court on a day to be fixed by the Court and at

that time to show cause why probation should not be revoked.

This 12th day of January, 1979.

/s/ _____

JACQUELINE L. TUMLIN
Probation Officer
Fulton County, Georgia

PETITION FOR REVOCATION OF PROBATION
STATE COURT OF FULTON COUNTY

Docket No. 164314

JANUARY TERM, 1979

THE STATE

v.

JIM TANTE AKA NORVELL OLIVER TANTE

NOW COMES DAVID E. ODOM PROBATION OFFICER OF FULTON COUNTY, in the name and behalf of the State of Georgia and brings this action against JIM TANTE aka Norvell Oliver Tante.

I.

That the Defendant entered a plea of guilty to (was convicted of) the offense of MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE, DISTRIBUTING OBSCENE MATERIAL (2 Cts) at the October Term, 1978.

II.

That this Court, on the 23rd day of October, 1978, did sentence the Defendant to serve as follows:

Count 1: Twelve (12) months, $5,000 fine and probated;

Count 2: Twelve (12) months, probated.

III.

That the Defendant has violated the terms and conditions of probation in the following particulars: Having failed to pay as directed.

IV.

WHEREFORE, the State of Georgia prays that the citation for revocation of probation be served on the De-

fendant and that the Defendant be directed to appear before this Court on a day to be fixed by the Court and at that time to show cause why probation should not be revoked.

This 17th day of January, 1979.

/s/ _____

DAVID E. ODOM
Probation Officer
Fulton County, Georgia

PETITION FOR REVOCATION OF PROBATION
STATE COURT OF FULTON COUNTY

Docket No. 166388

JANUARY TERM, 1979

THE STATE

v.

RAYMOND WOOD

NOW COMES DIXON E. NASH PROBATION OFFICER OF FULTON COUNTY, in the name and behalf of the State of Georgia and brings this action against Raymond Wood.

I.

That the Defendant (was convicted of) the offense of DISTRIBUTING OBSCENE MATERIAL (MHAN) at the September Term, 1978.

II.

That this Court, on the 23rd day of October, 1978, did sentence the Defendant to serve as follows:

Ct.1—Twelve (12) months, $5,000.00 fine, and probated.

Ct. 2—Twelve (12) months, $5,000.00 fine, and probated to follow Ct. 1.

III.

That the Defendant has violated the terms and conditions of probation in the following particulars: Failure to pay as directed.

IV.

WHEREFORE, the State of Georgia prays that the citation for revocation of probation be served on the Defendant and that the Defendant be directed to appear be-

fore this Court on a day to be fixed by the Court and at that time to show cause why probation should not be revoked.

This 16th day of January, 1979.

/s/ _____

DIXON E. NASH
Probation Officer
Fulton County, Georgia

IN THE STATE COURT OF FULTON COUNTY

CASE NO. 164312

STATE OF GEORGIA

v.

EDNA ALLEN

DISTRIBUTING OBSCENE MATERIAL

ORDER ON PROBATION HEARING—Filed Feb. 8, 1979

Petition having been filed by Jacqueline L. Tumlin, Probation Officer of Fulton County, in the name and behalf of the State of Georgia seeking to revoke probation in the above-captioned case, the same having come on regularly for hearing, the defendant being represented by counsel Glenn Zell, after hearing evidence and arguments and upon consideration, it is considered ordered and adjudged that the probationer has violated the conditions of probation in that she has failed to pay the fine as directed and is now in arrears in the amount of $1,500.00; however, it is considered to be to the best interest of all concerned that the probationer be allowed to pay the arrearage, and IT IS SO ORDERED that she be allowed to pay the arrearage by 3:00 o'clock p.m. on February 13, 1979 and upon her failure to do so, her probation shall stand revoked and she shall be required to serve the remainder of the sentences imposed in this case under confinement in the Fulton County Jail or Public Works Camp or such other place as the defendant can be legally confined.

This 8th day of February, 1979.

/s/ _____

WILLIAM H. ALEXANDER, JUDGE

IN THE STATE COURT OF FULTON COUNTY

Case No. 164314

STATE OF GEORGIA

v.

JIM TANTE AKA NORVELL OLIVER TANTE

DISTRIBUTING OBSCENE MATERIAL

ORDER ON PROBATION HEARING—Filed Feb. 8, 1979

Petition having been filed by David E. Odom, Probation Officer of Fulton County, in the name and behalf of the State of Georgia seeking to revoke probation in the above-captioned case, the same having come on regularly for hearing, the defendant being represented by counsel Glenn Zell, after hearing evidence and arguments and upon consideration, it is considered ordered and adjudged that the probationer has violated the conditions of probation in that he has failed to pay the fine as directed and is now in arrears in the amount of $1,500.00; however, it is considered to be to the best interest of all concerned that the probationer be allowed to pay the arrearage, and IT IS SO ORDERED that he be allowed to pay the arrearage by 3:00 o'clock p.m. on February 13, 1979 and upon his failure to do so, his probation shall stand revoked and he shall be required to serve the remainder of the sentences imposed in this case under confinement in the Fulton County Jail or Public Works Camp or such other place as the defendant can be legally confined.

This 8th day of February, 1979.

/s/ _____

WILLIAM H. ALEXANDER, JUDGE

IN THE STATE COURT OF FULTON COUNTY

Case No. 166388

STATE OF GEORGIA

v.

RAYMOND WOOD

DISTRIBUTING OBSCENE MATERIAL

ORDER ON PROBATION HEARING—Filed Feb. 8, 1979

Petition having been filed by Dixon E. Nash, Probation Officer for Fulton County, in the name and behalf of the State of Georgia seeking to revoke probation in the above-captioned case, the same having come on regularly for hearing, the defendant being represented by counsel Glenn Zell, after hearing evidence and arguments and upon consideration, it is considered ordered and adjudged that the probationer has violated the conditions of probation in that he has failed to pay the fine as directed and is now in arrears in the amount of $1,500.00; however, it is considered to be to the best interest of all concerned that the probationer be allowed to pay the arrearage, and IT IS SO ORDERED that he be allowed to pay the arrearage by 3:00 o'clock p.m. on February 13, 1979 and upon his failure to do so, his probation shall stand revoked and he shall be required to serve the remainder of the sentences imposed in this case under confinement in the Fulton County Jail or Public Works Camp or such other place as the defendant can be legally confined.

This 8th day of February, 1979.

/s/ _____

WILLIAM H. ALEXANDER, JUDGE

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

Case No. 164312
Case No. 164314
Case No. 166388

THE STATE

v.

EDNA ALLEN, JAMES TANTE AND RAYMOND WOOD,
DEFENDANTS

JOINT MOTIONS TO MODIFY CONDITIONS OF PROBATION ORDER—Filed Feb. 12, 1979

NOW COME the above defendants and show as follows:

1.

That the fines imposed in the above cases were imposed pursuant to Ga. Code Ann. § 27-2506.1, and therefore, said fines were part of the sentence and are not conditions of the probation.

2.

Further, pursuant to Ga. Code Ann. § 27-2711, ten (10) conditions of probation are set out, plus the Court shall determine any other terms and conditions of probation that will help rehabilitate the probationers. *Gay* v. *State*, 101 Ga. App. 225; *George* v. *State*, 99 Ga. App. 892 (1).

3.

That the Court imposed a sentence of twelve (12) months on probation and a fine of five thousand ($5,000) Dollars, as to Tante and Allen, and imposed two twelve month sentences and fines totaling ten thousand ($10,000) dollars on Wood as part of the sentence, and not as a condition of probation; further, Ga. Code Ann. § 27-2711 does not permit the court to impose penalties such as fines as conditions of probation.

4.

Therefore, the revoking of the probation for failure to pay the fines are illegal and void since the fines are not conditions of probation and that the Court can only cite the defendants for contempt for failure to pay said fines.

5.

Further, that if the Court has imposed as a condition to the probation that the defendants pay said fines at the rate of $500 per month, then this is a void and illegal condition, and the Court is without authority to impose this type of condition of probation, and this condition should be set aside.

6.

Further, to convert the sentences from probation to imprisonment because of failure to pay said fines due to the lack of finances on the part of the defendants violates the equal protection and due process clauses of the Fourteenth Amendment of the U.S. Constitution and similar provisions of the Georgia Constitution.

WHEREFORE, Defendants pray that the condition of probation to pay said fines be set aside for the above reasons and for such other relief as the Court deems just and proper.

/s/ _____

GLENN ZELL, *Attorney for Defendant*

Suite 620
66 Luckie St., NW
Atlanta, Georgia 30303
(404) 524-6878

ORDER

The within and foregoing Motion having been read and considered, let the same be filed. After considering said Motion, IT IS HEREBY OVERRULED.

This 13 day of February, 1979.

/s/ _____

Honorable WILLIAM ALEXANDER,
Judge, State Court of Fulton County

ORDER

The foregoing Petition read and considered. Let the Defendant EDNA ALLEN, be brought before me on the 26th day of January, 1979, at 9:00 A.M. in the Fulton County Courthouse for a hearing to determine whether his probated sentence should be revoked as prayed.

Let a copy of the foregoing Petition and this Order be served on the said EDNA ALLEN.

This 22 day of January, 1979.

/s/ _____

WILLIAM H. ALEXANDER, JUDGE

CERTIFICATE OF SERVICE

I have this day served a true and correct copy of the within Rule Nisi upon the named Defendant by handing the same to said Defendant in person.

This ___ day of ___, 19___.

/s/ _____

Deputy Sheriff—Probation Officer

EDNA ALLEN
FP#FC-3137

No. 164312

ORDER OF REVOCATION

WHEREAS, pursuant to notice given to the Defendant, a full hearing was conducted by this Court on the date aforesaid and the Court has adjudged that the terms of probation had been violated as set forth: Having failed to pay as directed by the Court, and a hearing having been held

NOW, THEREFORE, it is ordered and adjudged that the probation provisions in said original sentence be revoked in accordance with Code Section 27-2713 (Ga. L. 1956, pp. 27, 32; Ga. L. 1960, p. 857) and the Defendant is hereby required to serve balance of said sentence in the Fulton County Jail or the Public Works Camp.

This the 13th day of February, 1979.

/s/ _____
WILLIAM H. ALEXANDER,
Judge, State Court of Fulton County

ORDER

The foregoing Petition read and considered. Let the Defendant JIM TANTE aka NORVELL OLIVER TANTE, brought before me on the 26th day of January, 1979, at 9:00 A.M. in the Fulton County Courthouse for a hearing to determine whether his probated sentence should be revoked as prayed.

Let a copy of the foregoing Petition and this Order be served on the said JIM TANTE aka NORVELL OLIVER TANTE.

This 22 day of January, 1979.

/s/ _____
WILLIAM H. ALEXANDER, JUDGE
Judge, State Court of Fulton County

CERTIFICATE OF SERVICE

I have this day served a true and correct copy of the within Rule Nisi upon the named Defendant by handing the same to said Defendant in person.

This 22nd day of January, 1979.

/s/ _____
DAVID E. ODOM
Probation Officer

Officer

JIM TANTE AKA NORVELL OLIVER TANTE
Docket No. 164314
APD #278440

ORDER OF REVOCATION

WHEREAS, pursuant to notice given to the Defendant, a full hearing was conducted by this Court on the date aforesaid and the Court has adjudged that the terms of probation had been violated as set forth: Having failed to pay as directed by the Court and a hearing having been held.

NOW, THEREFORE, it is ordered and adjudged that the probation provisions in said original sentence be re-

voked in accordance with Code Section 27-2713 (Ga. L. 1956, pp. 27, 32; Ga. L. 1960, p. 857) and the Defendant is hereby required to serve balance of sentence in the Fulton County Jail or the Public Works Camp,

This the 13th day of February 1979

/s/ _____
WILLIAM H. ALEXANDER, JUDGE
Judge, State Court of Fulton County

ORDER

The foregoing Petition read and considered. Let the Defendant Raymond Wood, be brought before me on the 26th day of January, 1979, at 9:00 A.M. in the Fulton County Courthouse for a hearing to determine whether his probated sentence should be revoked as prayed.

Let a copy of the foregoing Petition and this Order be served on the said Raymond Wood.

This 22 day of January, 1979.

/s/ _____
WILLIAM H. ALEXANDER, JUDGE
Judge, State Court of Fulton County

CERTIFICATE OF SERVICE

I have this day served a true and correct copy of the within Rule Nisi upon the named Defendant by handing the same to said Defendant in person.

This ___ day of ___, 19___.

/s/ _____ _____
Deputy Sheriff—Probation Officer

RAYMOND WOOD
FP#FC78718

Docket No. 166388

ORDER OF REVOCATION

WHEREAS, pursuant to notice given to the Defendant, a full hearing was conducted by this Court on the date aforesaid and the Court has adjudged that the terms of probation had been violated as set forth: Failure to pay as directed, having been represented by attorney Glen Zell, and a hearing having been held.

NOW, THEREFORE, it is ordered and adjudged that the probation provisions in said original sentence be revoked in accordance with Code Section 27-2713 (Ga. L. 1956, pp. 27, 32; Ga. L. 1960, p. 857) and the Defendant is hereby required to serve balance of said sentence in the Fulton County Jail or the Public Works Camp, and subject,

This the 13th Day of February, 1979.

/s/ _____
WILLIAM H. ALEXANDER, JUDGE
Judge, State Court of Fulton County

COURT OF APPEALS OF GEORGIA

57867. WOOD (RAYMOND) ET AL. *v.* THE STATE. Ba–102

OPINION—JUNE 5, 1979

BANKE, Judge.

Each of the three appellants was convicted of distributing obscene materials and each was sentenced to pay a fine and to serve 12 months on probation. Following the affirmance of these convictions on appeal, the trial court entered probation orders requiring each appellant to make payments of $500 per month towards payment of his or her fine as a condition of probation. Thereafter, each appellant's probation was revoked for failure to make the $500 payments as directed.

At the revocation hearing, it was established that none of the appellants had the financial resources to make the payments. On appeal, the appellants contend that to revoke their probation under these circumstances amounts to imprisoning them for their indigency, in violation of their rights under the Fourteenth Amendment of the United States Constitution. They further contend that the trial court was without authority under Georgia law to require payment of the fines as a condition of probation. *Held:*

1. In *Hunter* v. *Dean*, 240 Ga. 214 (239 SE2d 791) (1977), a requirement that a defendant pay a fine as a condition precedent to serving a sentence on probation was held not to violate the equal protection or due process provisions of the United States Constitution, even "when the defendant is indigent and unable to make immediate payment of the fine." See generally Code Ann. § 27–2709. The appellants contend that while this may be the law where payment of the fine is required as a condition precedent to probation, the situation is different where payment of the fine is required as a condition of the probation itself. We are unable to accord this delicate distinction the weight which the appellants seek to give it. In our view, *Hunter* controls this case and requires the affirmance of the trial court's ruling.

2. The fact that Code Ann. 27-2711 does not list payment of a validly imposed fine as one of the permissible conditions of probation does not require a different result. It is well settled that the conditions enumerated in that section are not exclusive, but the court may impose other requirements not specifically listed therein. See *George* v. *State*, 99 Ga. App. 892, 893 (109 SE2d 883) (1959); *Gay* v. *State*, 101 Ga. App. 225 (1) (113 SE2d 223) (1960).

Judgment affirmed. McMurray, P.J., and Underwood, J., concur.

Supreme Court of the United States

No. 79-6027

RAYMOND WOOD, ET AL., PETITIONERS,

v.

GEORGIA

On PETITION FOR WRIT OF CERTIORARI TO the Court of Appeals Court of the State of Georgia, No. 57867

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

MAY 19, 1980

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

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SUPREME COURT, U.S.

NO. 79-6027

ORIGINAL COPY

RAYMOND WOOD, EDNA ALLEN,
AND JAMES TANTE,

Petitioners,

v.

THE STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

Please serve:

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IN THE

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RAYMOND WOOD, EDNA ALLEN,
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THE STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

QUESTION PRESENTED

May a state imprison a person for the non-payment of a fine which is to be paid in installments during a period of probation when during that probationary period no payments are received after approximately three months while the individual is on probation?

STATEMENT OF THE CASE

Petitioners Edna Allen and James Tante were convicted under Georgia's obscenity statute concerning the showing of two movies which were adjudged to be obscene in violation of Ga. Code Ann. § 26-2101. Petitioner Allen was a ticket taker at the theater showing these films, while Petitioner Tante was the projectionist. The convictions of Allen and Tante were upheld by the Court of Appeals of Georgia. Allen, et al. v. State, 144 Ga. App. 233, 240 S.E.2d 754 (1977). Petitioner Wood was tried and convicted for distributing obscene materials under the same Georgia statute, only in this instance they were magazines which were being sold at an adult book store. Petitioner Wood's conviction was affirmed by the Court of Appeals of Georgia. Wood v. State, 144 Ga. App. 236, 240 S.E.2d 743 (1977). All of the Petitioners were tried and convicted following a jury trial. Certiorari to the Supreme Court of Georgia was denied in both appeals.

STATEMENT OF THE FACTS

The complained of sentences were imposed in October of 1978, with each Petitioner being placed on a period of probation along with the payment of a fine. Specifically, Petitioner Wood received a $10,000.00 fine and twelve months on probation on two counts which were running consecutively, with Petitioners Tante and Allen receiving a $5,000.00 fine and twelve months on probation. The fines were to be paid on an installment basis to the Probation Office in Fulton County, Georgia at the rate of $500.00 per month for ten months by each Petitioner.

Approximately two and one half months after being placed on probation petitions for revocation of probation were filed against each Petitioner for their failure to comply with this portion of the terms of probation, namely the installment payments of $500.00 per month as part of fines which were adjudged earlier. A revocation hearing was held on January 26, 1979. (See, Appendix A which is the transcript of the revocation proceedings.)[1/]

Petitioner Allen, the ticket taker,admitted at the revocation hearing that her probationary period began on October 23, 1978. (T. 6, 8). Ms. Allen further testified that she was collecting $64.00 a week from unemployment compensation having been dismissed by the employer at the movie theater where the obscene films had been shown, films which led to her arrest. (T. 10-11). Ms. Allen's testimony indicates that when she was hired she was told by her employer that they would pay any fine which might be adjudged against her, and that they would take care of her in connection with any litigation growing out of her employment. (T. 4, 13). In fact, in another proceeding which arose subsequent to this conviction Ms. Allen's employer, the same people that

---

[1/] References to testimony from the January 26, 1979, revocation hearing will appear as T. followed by the respective page number on which the cited material appears.

employed her at the movie theater, paid her attorneys' fees and a fine following her entering a plea of guilty. (T. 12).[2/] While Ms. Allen indicated that she had been unsuccessful in trying to secure employment, her testimony and that of her probation officer make it quite apparent that she sought no modification of the probation order to reduce the amount of the fine, or to provide for smaller payments.[3/] At no time has Ms. Allen tendered even a partial payment in a minimal amount such as $5.00 or $10.00. Ms. Allen argues that she is not able to get a job, particularly because she has an eye problem, but this eye problem only occurred approximately a week before this hearing. (T. 8). Furthermore, there is no indication from Ms. Allen that at the time the court pronounced sentence there was any objection or comment to the court that she would be unable to pay the fine. Ms. Allen by her silence in October of 1978 engaged in a course of conduct which led the court to believe that she had the resources to pay the fine.

Petitioner Tante gave similar testimony, which indicates that he too was of the belief that his employer would pay the fine. He too in a subsequent case was also represented by the same attorney who is representing him in this appeal, and following the entering of a guilty plea his employer paid both his attorneys' fee and the fine. (T. 41, 43). The probation

---

[2/] During the probation revocation hearing there were several discussions between the Court, the Petitioner's lawyer and the Solicitor concerning the fact that the Petitioner's lawyer also represents the Plaza Theater, the theater in which Petitioners Allen and Tante were employed. The argument of the Solicitor was that the employer had agreed to pay the fines, and now was attempting to get out of paying the fines by arguing that there was no agreement, and that the Petitioners were now indigents, so that under the Equal Protection Clause, they could not have their probation revoked because of their failure to pay fines because of a lack of financial resources or ability to pay the fines. See, T. 26-28.

[3/] The reason for going on unemployment appears to be somewhat indicative of a collusive agreement between Ms. Allen and her employer which would result in a reduced ability to pay any fine.

officer in regard to Petitioner Tante stated that he would have accepted minimal amounts such as $5.00 or $10.00, but that the Petitioner never sent anything in, nor did the Petitioner ever offer to pay any reduced amounts. (T. 32). There is no showing in regard to the testimony of Petitioner Tante that he is indigent, the only testimony being that his income is not sufficient to meet the monthly payments. Once again, Petitioner Tante never sought any modification of the fine, and in essence led the Court to believe that he could pay the fine.

The testimony of Petitioner Wood is almost identical to that given by Petitioners Allen and Tante. Wood testified that it was his understanding that at the time he was employed by the company where several obscene magazines were sold leading to his arrest and conviction, that his employer would pay any fines and court costs as a part of his employment. (T. 62). In fact, in two subsequent arrests following the arrest which led to this conviction, the employer of Petitioner Wood paid court costs, fines, and attorneys' fees. (T. 51, 57). Similar to Petitioners Allen and Tante, Wood never informed the Court at the time the probated sentence now complained of was given to him, that he could not pay the fine, nor has he ever sought a modification of the fine.

REASON FOR NOT GRANTING THE WRIT

THE REVOCATION OF A SENTENCE PROBATED ON CONDITION OF INSTALLMENT PAYMENTS OF A FINE WHEN THE PROBATIONER FAILS TO PAY DOES NOT VIOLATE EQUAL PROTECTION RIGHTS.

The Petitioners each contend that their imprisonment for failure to pay a fine on installments after being placed on probation violates the Equal Protection Clause of the Constitution since they are financially unable to meet each installment as it becomes due. In essence, the Petitioners seek to equate their conditionally probated sentences within the legislatively mandated judgments which frame the issues in Williams v. Illinois, 399 U.S. 235 (1970) and Tate v. Short, 401 U.S. 395 (1971). In Williams, supra, this Court stated that a period of confinement may not be extended beyond the maximum period provided by statute because of the failure of an individual to meet the conditions of that sentence which calls for monetary remuneration because of the individual's indigency. Id. In Tate v. Short, supra, this Court held that a statute may not immediately convert a fine into a period of imprisonment when the individual, because of indigency, cannot pay the adjudged fine.

This Court in Williams, supra, did not rule out the right of a state to enforce the non-payment of a fine as part of a sentence where the individual was unable to pay the fine.

> The state is not powerless to enforce judgments against those financially unable to pay a fine; indeed, a different result would amount to inverse

> discrimination since it would enable an indigent to avoid both the fine and imprisonment for non-payment whereas other defendants must always suffer one or the other conviction. Id. at 399.

This was further reiterated in Tate, supra, wherein this Court stated, "Nor is our decision to be understood as precluding imprisonment as an enforcement method when alternative means are unsuccessful despite the defendant's reasonable efforts to satisfy the fines by those means; the determination of the constitutionality of imprisonment in that circumstance must await presentation of a concrete case." Id. at pp. 400-401.

The most recent case to come before this Court to consider the issue which is raised in this matter is that of Hunter v. Dean, 439 U.S. 281 (1978), a case in which the writ of certiorari was dismissed as having been improvidently granted. In Hunter, supra, the facts showed that at a plea of guilty there was an inquiry by the court as to whether Hunter could pay a fine, and how the fine could be paid. There petitioner Hunter responded that her cousin would pay the fine. As a condition to probation a fine was adjudged. In neither Morris v. Schoonfield, 399 U.S. 580 (1970); Williams v. Illinois, supra; or Tate v. Short, supra, has the present type of situation been reviewed under the Equal Protection Clause, with the Court rather assessing the statutory schemes in light of the objectives of those statutes. Sub judice, the importance of the sentencing functions of a state court is the matter which is presented in this question for a petition for writ of certiorari. Under Georgia law a trial judge may place an individual on probation under the Statewide Probation Act, Ga. Laws 1956, pp. 27-26, as amended [Ga. Code Ann. §§ 27-2702 et.seq. (1978 Rev.)]. As a condition precedent to probation

the judge in his discretion may require the payment of a fine, costs or both. Id. During that time when the sentence is probated the sentencing court retains jurisdiction over the defendant and may revoke, rescind, or modify the sentence. Id. At no time during the probationary period which commenced on October 23, 1978, have any of the Petitioners sought a modification or a rescinding of that portion of the sentence which required the payment of a fine. None of the Petitioners offered to make any partial payments, nor did any of the Petitioners at the time the fines were imposed lead the court to believe that they could not pay the fines. To the contrary, by their silence the Court was led to believe that the Petitioners had the financial means by which to pay the fines. It is also apparent that the Petitioners believed that the fines would be paid for them.[4/] (T. 14, 41, 43, 62). In fact, each of these Petitioners had subsequent pleas of guilty in which fines were adjudged, with the fines being paid by their respective employers. It is also apparent that at the time each of the Petitioners received their probated sentence which called for the payment of a fine that there was an agreement that their fines would be paid for them.

> I candidly admit to the court there was an agreement between Ms. Allen and another person about paying the fine. And apparently it hasn't been enforced. (Remark by Attorney Zell to the Judge during the Revocation Hearing appearing at page 16 in said transcript which appears as Appendix A.)

If as this Court stated in Tate v. Short, supra, a state may enforce its judgments upon those who do not pay their fine, this would seemingly concede that the states have the right to imprison a person for the non-payment of a fine when they have been given

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4/ Belief that another would pay a fine also appeared in Hunter v. Dean, supra.

an opportunity to pay that fine in installments, particularly when they have led the court to believe that they could make those payments, and have not sought any modification or a rescinding of those payments.

The Petitioners should be precluded from being rewarded for their less than good faith assurances at the time the probated sentences were given to them by not indicating to the Court that the fines were beyond their financial means, and then coming in at a later time after having the advantage of being placed on probation to argue that their incomes are insufficient to pay those fines. There is something fundamentally repugnant about an individual being less than candid with a court, particularly when they lay back in hopes that they can meet the installments, and then seek to nullify their eariler approval of that sentence by their silence claiming that they are financially unable to meet those payments. Respondent believes that the Petitioners in this instance are not indigents, in that two of them are gainfully employed, and the third one chooses unemployment compensation which pays a far lesser amount than would be available if she had a permanent job.

At stake here is the reputation of the sentencing function of the criminal justice system. The public assesses the effectiveness, that is,the success or failure of the criminal justice system, in terms of the direct results which are achieved from the sentencing procedure in that system.

The payment of a fine on an installment basis is a legitimate sentencing tool which helps to assure that the probationer will have a greater responsibility in conforming his conduct to the law, since the fear of revocation and possible imprisonment has a more immediate impact on the probationers here than on a probationer who pays his fine up front, or at the beginning of the period of probation. If, however,

the probationer chooses to disregard his financial obligations then the trial court should have the option of revoking probation and placing the individual in jail, particularly when as in this case the Petitioners have not made any reasonable efforts to satisfy the fines imposed by the Court.

The integrity of the criminal justice system requires that those who choose to mislead a sentencing court into a belief that they can make a fine not be permitted to hide behind a claim of indigency, particularly when they have not made any efforts to make partial payments of a lesser amount, or seek a modification of that sentence. Sub judice, the claim of indigency on behalf of the Petitioners is transparent. There has been absolutely no showing by any of the Petitioners that they would be unable to pay these fines under any circumstances. Clearly, the Petitioners have not made any sincere efforts in trying to pay the fine, or in seeking to have the fines reduced. The cases of United States v. Boswell, 605 F.2d 171 (5th Cir. 1979); and United States v. Taylor, 321 F.2d 339 (4th Cir. 1963) are all distinguishable from the facts in this instance, since there has been no showing in this case that any efforts were made by the Petitioners to seek reduced payments. In fact, Respondent believes that the Petitioners have no intention whatsoever in paying these fines, as their testimony indicates that they are of the opinion that their employers should have paid these fines. The Petitioners are thus holding the enforcement of fines as a recognized sentencing tool a hostage because of their beliefs that others should pay their fines for them. By arguing at this time that they are indigent they are using this as a shield to hide behind their responsibility to pay a fine, which they earlier agreed to pay by virtue of their silence which led the sentencing court to conclude that they were able to pay these fines.

CONCLUSION

For these reasons it cannot be said that the Equal Protection Clause has been violated, particularly where the Petitioners do not come to this Court with clean hands concerning their failure to pay a fine as a part of a sentence which they received following their criminal convictions in Georgia.

Respectfully submitted,

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IN THE

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OCTOBER TERM 1979

NO. 79-6027

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RAYMOND WOOD, EDNA ALLEN,
AND JAMES TANTE,

Petitioners,

v.

THE STATE OF GEORGIA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF GEORGIA

RESPONSE FOR THE PETITIONERS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-6027

RAYMOND WOOD, EDNA ALLEN,
AND JAMES TANTE,

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The question presented and the statement of the case are substantially correct.

Respondent fails to mention in the Statement of the Facts that one of the conditions of the probation is not to violate the law. When petitioners' appeals all became final they left their employment which was working in an adult theater and an adult bookstore. To continue to work there would subject any one of the three petitioners to being arrested, and then their probation might have been revoked. Since Mrs. Allen could not work in the theater due to this probation, the owner fired her before she quit so she could collect unemployment insurance. The reason the respondent gives is that it was done for the purpose of having a reduced ability to pay the fines. (B-4) This is absurd. She had to quit or get fired.

Also when all three petitioners were found guilty by a jury the trial judge was well aware of their limited financial resources. Obviously, the State was in hopes that

the owner of the businesses would pay the fine and therefore urged the imposition of a large fine. Respondent argues that the silence of the petitioners misled the Court. (B-4). This is absurd. The Court was fully aware of the situation.

Counsel admitted in the revocation hearings that the owner had previously agreed to pay the fines. When the owner didn't pay the fines, the State moved to revoke the probation. All three petitioners called counsel to represent them at the hearings. Counsel merely showed the trial judge that the three petitioners had quit the adult business and had no money. Any agreement between them and the owner was not legally enforceable under Georgia law. If there was any conflict between counsel, who had represented the owner and the petitioners, it was clearly waived by the petitioners.

Respondent argues at page 5 of his brief that petitioners Tante and Wood never complained that they could not pay their fines. This is absurd. The Court was fully aware of their financial position at the time of sentencing. The large fines were imposed at the urging of the prosecutor in the hopes the owner would pay the fines.

Also all three petitioners told the probation officer that they did not have the money when they went on probation in October of 1978.

The three petitioners testified that they had no funds to pay their fines in November and December. The State did not dispute their lack of financial resources. Respondent now claims they should have asked for a modification of their fines. The judge, prosecutor, and the probation officer knew the petitioners' financial condition. The petitioners were never really expected to pay the fines.

Respondent at page nine argues that the petitioners did not act in good faith, and were less than candid with the Court. At page ten the respondent argues that they should have made an effort to make a partial payment. The petitioners

were revoked not for failing to make partial payments, but for failing to make monthly payments as directed which is $500 per month. The petitioners are actually scapegoats and they are being punished because the State could not or did not prosecute the owner of the adult businesses. The trial judge never relied on the silence of the petitioners. Respondent repeatedly goes outside the record claiming the petitioners have not been fully honest. This couldn't be further from the truth. The record in both jury trials reflect that the petitioners were employed as a clerk, projectionist, and ticket taker. How could the Court be misled as to their financial abilities.

CONCLUSION

Petitioners'probation was revoked on the sole ground that they failed to pay $500 per month as directed by the Court. This was an impossible condition to meet. The petitioners have obeyed all other rules of probation with the exception of paying their fines. The Court and the prosecutor knew the petitioners were employees earning a nominal salary. They were required to leave their jobs because of probation. Petitioners informed their probation officer that they had no funds to pay $500 per month. Counsel informed the trial judge of these facts and asked that the fines be remitted. Petitioners have done all they can to satisfy probation with the exception of paying their fines. To place them in jail for not having $500 per month is to punish them for their poverty or lack of financial resources. The sentence of the petitioners turns solely upon the amount of money he has. See Griffin v. Illinois, 351 U. S. 12, 19 (1956).

The State seems to want to punish the petitioners because their former employer has reneged on an agreement that is unenforceable in Court. This type of thinking is deplorable, and it makes no sense to extract a prison term from an individual who has been a law abiding citizen. That is exactly

what probation is supposed to accomplish. To withdraw probation knowing the petitioners never had the money in the first place is toying with their freedom.

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CERTIFICATE OF SERVICE

I, Glenn Zell, Attorney for Petitioners, certify I served a copy of the foregoing Response For The Petitioners on John W. Dunsmore, Jr., 132 State Judicial Bldg., 40 Capitol Square, S. W., Atlanta, Georgia 30334 by placing same in a properly addressed envelope and depositing it with the United States Postal Service with adequate postage affixed thereto.

This 24 day of April, 1980.

GLENN ZELL

Supreme Court, U.S.
FILED
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MICHAEL RODAK, JR., CLERK

No. 79-6027

IN THE
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OCTOBER TERM, 1979

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vs.

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BRIEF FOR PETITIONERS

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IN THE

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OCTOBER TERM, 1979

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Petitioners,

VS.

THE STATE OF GEORGIA,
Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF GEORGIA

QUESTION PRESENTED

Once a trial judge has determined that probation is the appropriate punishment for a particular offender, and imposes a fine to be paid on installments during the probationary period, may it, consistently with the Equal Protection and Due Process Clauses of the Fourteenth Amendment, revoke the probation of the offender for failure to pay the installments as directed where the evidence established that the offender was indigent and that the offender was not negligent in any manner, and did not deliberately disburse or dissipate monies that resulted in his inability to pay?

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BRIEF OF PETITIONERS, WOOD, ALLEN, AND TANTE ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

Petitioners, Raymond Wood, Edna Allen, and James Tante pray that the opinion and judgment of the Court of Appeals of Georgia be reversed.

OPINION BELOW

The opinion of the Court of Appeals of Georgia is reported at 258 SE2d 171 (1979), and was filed on June 5, 1979, and appears at p. 42 of the Appendix.

JURISDICTION

The judgment of the Court of Appeals of Georgia was entered on June 5, 1979. A rehearing was denied on July 6, 1979. A copy of the denial appears as Appendix "B" to the Petition. Thereafter petitioners filed a Petitioin for Writ of Certiorari to the Supreme Court of Georgia which was denied on September 4, 1979. A copy of the denial appears as Appendix "C" to the Petition. Mr. Justice Powell granted an extension of time to and including February 1, 1980 within which to file a petition for Writ of Certiorari. A timely petition for Writ of Certiorari was duly filed on February 1, 1980, and on May 19, 1980, the petition was granted.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Fourteenth Amendment to the Constitution, and Ga. Code Ann. §27-2901, appear as Appendix "D" to the petition.

STATEMENT

Petitioners were placed on probation after being convicted of distribution of obscene materials. Their cases are reported at 240 SE2d 743, and 240 SE2d 754 (1977). Wood received a ten thousand ($10,000.00) dollar fine and twelve (12) months on probation on each of two (2) counts to run consecutively. Tante and Allen each received a five thousand ($5,000.00) dollar fine and twelve (12) months on probation. (Appendix 11-16)

The remittiturs were made the judgment of the trial court on October 23, 1978. The trial judge, in each probation order, as a condition required each appellant to pay five hundred ($500.00) dollars per month until the fine was paid. (Appendix 17-25)

Thereafter, on January 12, 1979, or approximately 2 1/2 months after being placed on probation, a petition for revocation of probation was filed against each petitioner and the sole ground for revoking the probation was that the petitioner failed to pay as directed. (Appendix 26-31)

A hearing was held on January 26, 1979. Jacqueline L. Tomlin, Edna Allen's probation officer, testified that the petitioner was on unemployment compensation, and that Allen had not paid the $500.00 per month and had no idea how she would raise the fine money. (Tr. 4-6) Upon

questioning by her counsel, Allen testified that she received $64.00 per week or about $250.00 per month, and has no other assets or sources of income. (Tr. 7) Allen is presently having eye trouble, is 54 years of age, and has been turned down for employment. (Tr. 8, 9, 24, 25) She borrowed money to pay for her eye glasses, and has no money left over, after paying expenses, to pay on her fine. (Tr. 9-11)

Gene Odum, James Tante's probation officer, testified that Tante had complied with the conditions of probation except paying the $500.00 per month on the fine. Tante told Odum that his employer was supposed to pay the fine, and that he was on a very tight budget. (Tr. 33) Tante testified he worked for the State of Georgia as a correctional officer. His gross income is $540.00 per month, and he has no other property or income. (Tr. 33, 35) His net pay is $516.00 per month, and he had nothing left over in November and December to pay on the fine. (Tr. 36, 37)

Tante is 60 years of age and was unemployed for eight months and was on unemployment before he obtained his present job. (Tr. 38-40)

Dixon E. Nash, Raymond Wood's probation officer, testified that Wood had not paid the fine as directed. Wood had been terminated from his prior employment, and just started a new job. His gross income is $120.00 per week at his new job. (Tr. 53) Wood's net pay was about $155.00 after deductions on his old job, and he had no money left over to pay his fine. Also, he is the sole support of his wife and three children and his wife is pregnant. (Tr. 54, 55)

The Court issued an Order revoking the probation of all three petitioners on the sole ground that each petitioner violated the terms of probation by not paying the fine as directed, being $500.00 per month or $1500.00 for three months. (Appendix 32-34, 38-41)

SUMMARY OF THE ARGUMENT

The issue presented in this case is simply whether a trial judge may revoke the probation of the offender where he has not paid the monthly installments set by the court due to his indigency.

Petitioners contend that they are denied equal protection of the law as applied since going to prison depends solely on the petitioners' financial ability to pay the fine. The fact that the difference in treatment may be unintended, and results from the judge enforcing a statute which is valid on its face, does not preclude an attack on the court's order on equal protection grounds. *Griffin v. Illinois,* 351 U.S. 12 (1956).

Secondly there is no compelling state interest to collect the fines and imprisonment and imprisonment certainly will not serve the State's interest in the rehabilitation and re[illegible]ha-tion of the three petitioners. The State, through civil process, can always enforce the collection of the fines such as by levy or garnishment. Imprisonment, due solely to their indigency, does not promote the State's interest as all this could accomplish would be to incarcerate all poor people or indigents who cannot pay their fines.

ARGUMENT

1.

THE REVOKING OF PROBATION DUE TO THE FINANCIAL INABILITY OF THE PETITIONERS TO PAY $500 PER MONTH VIOLATES PETITIONERS' EQUAL PROTECTION RIGHTS UNDER THE FOURTEENTH AMENDMENT.

The Court in *Wood, et al. v. State, supra,* relied on *Hunter v. Dean,* 239 SE2d 791 (1977). See also *Barnett v. Hopper,* 217 SE2d 280 (1975) and *Calhoun v. Couch,* 207 SE2d 455 (1974). In *Hunter* the Georgia Supreme Court held that *Tate v. Short,* 401 U.S. 395 (1971), *Morris v. Schoonfield,* 399 U.S. 508 (1970), and *Williams v. Illinois,* 399 U.S. 235 (1970) are limited to their precise facts, and therefore, a defendant may be imprisoned for failure to pay his fine immediately.

It is true that the three Supreme Court precedents are distinguishable from the case at bar. In *Williams v. Illinois, supra,* this Court held that an individual unable to pay a fine could not constitutionally be incarcerated beyond the maximum duration fixed by statute. The Illinois defendant had been sentenced to the maximum confinement and then required to remain 101 days further to satisfy at $5 per day his $505.00 fine and court costs. On the same day this Court in *Morris v. Schoonfield, supra,* vacated a conviction and remanded it for reconsideration in light of *Williams v. Illinois.* Justice White, with three other justices concurring, opined that an indigent could not be imprisoned for failure to pay a fine immediately, regardless of whether this resulted in incarceration for a term longer than the maximum permitted

under statute. This was based on the view that the constitution forbade converting a fine into a sentence due to immediate financial inability to pay. The next term in *Tate v. Short, supra,* this Court adopted the language from the *Morris* case and held that it was unconstitutional to convert a fine into imprisonment for failure to pay a fine immediately.

However, in *Tate v. Short, supra* at 400, this Court stated that:

> "* * * Nor is our decision to be understood as precluding imprisonment as an enforcement method when alternative means are unsuccessful despite the defendant's reasonable efforts to satisfy the fines by those means; the determination of the constitutionality of imprisonment in that circumstance must await the presentation of a concrete case."

The facts of the present case appears to be the concrete case mentioned in *Tate.*

The Federal courts have followed literally the rule set out in *Tate, supra* at page 400, that:

> "We emphasize that our holding today does not suggest any constitutional infirmity in imprisonment of a defendant with the means to pay a fine who refuses or neglects to do so."

In *U.S. v. Boswell,* 605 F.2d 171 (5th Cir. 1979), the Court held that a revocation of probation was erroneous if defendant did not have the resources available, had no way to acquire them, and was not negligent or deliberate in allowing funds that he had to be disbursed or dissipated in a manner that resulted in his inability to pay. See also *Barnett v. Hopper,* 548 F.2d 550 (5th Cir. 1979), vacated as moot, *Hopper v. Barnett,* 439 U.S. 1041 (1978).

Similarly in *U.S. v. Taylor,* 321 F.2d 339 (4th Cir. 1963),

the Court held that if the defendant was too poor to pay the fines, and was sincere in trying to pay the fines, his probation should not be revoked.

In *U.S. v. Savage,* 440 F.2d 1237, 1239 (5th Cir. 1971) the Court held that a defendant:

> "can not be held to be in violation of the condition (of his parole) unless he is clearly at fault."

The court held that the District Court could not revoke appellant's probation unless it is positively and clearly shown that the failure to meet the condition was due to the appellant's neglect or default.

In *Hensley v. U.S.,* 257 F.2d 61 (5th Cir. 1958), the probation was properly revoked since the defendant had fraudulently transferred assets to avoid the payment of taxes.

Petitioners argue that to imprison a person for financial inability to pay a fine immediately violates equal protection of the law since the sole distinction is one of wealth, and therefore the procedure is invalid, *Frazier v. Jordan,* 457 F.2d 726 (5th Cir. 1972).

Even though the proposition that wealth is a "suspect classification" has been questioned by *San Antonio School District v. Rodriguez,* 411 U.S. 1, 21 (1973), the basic principle of law is sound.

Although this Court has characterized exclusions based upon wealth as "traditionally disfavored." *Harper v. Virginia State Board of Elections,* 383 U.S. 663, 668 (1966), it has stopped short of branding wealth distinctions across the board as "suspect" per se. In *Maher v. Roe,* 432 U.S. 464, 471, fn.6 (1977), this Court made it clear that its restraint on the point has not been exhibited in cases involving the administration of criminal justice but in such areas as "economics and social welfare." *Dandridge v.*

Williams, 397 U.S. 471 (1970) (family ceilings on AFODC payments) *San Antonio Independent School District, v. Rodriguez, supra.* (public school financing); *Maher v. Roe, supra.* (Medicaid expenditures). These are matters which are heavily laden with public policy considerations, which are susceptible to a variety of legitimate approaches, and which require a balancing of diverse interests and priorities. In short, these are areas which are especially within the legislative domain, and are areas in which it would be impossible to decree "absolute equality or precisely equal advantages." *San Antonio Independent School District v. Rodriguez, supra,* 411 U.S. at p. 24.

One must begin with the fundamental principle of *Griffin* that justice must be administered to all persons equally. "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." *Griffin v. Illinois, supra,* 351 U.S. at p. 19.

Decisions following *Griffin* have consistently reaffirmed these fundamental principle of equal justice. *Eskridge v. Washington State Board of Prison Terms,* 357 U.S. 214 (1958); *Douglas v. California,* 372 U.S. 353 (1963); *Lane v. Brown,* 372 U.S. 477 (1963); *Draper v. Washington,* 372 U.S. 487 (1963).

It must be admitted that the equal protection clause does not require "Absolute equality." *Douglas v. California, supra,* 372 U.S. at 357. It is not "a demand that a statute necessarily apply equally to all persons." *Rinaldi v. Yeager,* 384 U.S. 305, 309 (1966), and it permits a state to "provide for differences so long as the result does not amount to * * * an 'invidious discrimination.' " *Douglas v. California, supra,* 372 U.S. at p. 356.

Simply stated the concept of the equal protection of the laws compels recognition of the proposition that persons

similarly situated with respect to the legitimate purpose of the law receive like treatment.

The traditional test has been that the "distinction drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as villative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal." *McDonald v. Board of Education,* 394 U.S. 802 (1969)

This Court has tended to employ a two level test in reviewing legislative classifications under the equal protection clause. In the area of economic regulation, this Court has experienced restraint, investing legislation with a presumption of constitutionality and requiring, merely that distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose. *McDonald v. Board of Education, supra,* 394 U.S. at p. 809.

On the other hand cases involving suspect classifications or touching on fundamental interests this court has adopted an attitude of active and critical analysis, subjecting the classification to strict scrutiny. *Skinner v. Oklahoma, ex rel Williamson,* 316 U.S. 535, 541 (1942); *Sherbert v. Verner,* 374 U.S. 398, 406 (1963).

Under the strict standard applied in such cases, the state bears the burden of establishing not only that it has a compelling interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose.

In *Williams v. Illinois, supra,* this Court dealt with the equal protection clause in a factual setting very similar to the one now before this court. This court applied the teachings of the Griffin case, since the Illinois statute as applied to *Williams* works on invidious discrimination solely because

he is unable to pay the fine. On its face the statute extends to all defendants an apparently equal opportunity for limiting confinement to the statutory maximum simply by satisfying a money judgment. In fact, this is an illusory choice for *Williams* or any indigent who, by definition is without funds. Since only a convicted person with access to funds can avoid the increased imprisonment the Illinois statute, in operative effect, exposes only indigents to the risk of imprisonment beyond the statutory maximum. By making the maximum confinement, contingent upon one's ability to pay, the State has visited different consequences on two categories of persons since the result is to make incarceration in excess of statutory maximums applicable only to those without the requisite resources to satisfy the money portion of the judgment. This Court also appears to have concluded that the discrimination inherent in the type of sentence in *Williams* is not necessary to promote such "substantial and legitimate" interest. By pointing to the existence of alternative, less intrusive methods of promoting this interest, this Court in effect demonstrated the lack of necessity. *Illinois v. Williams, supra.*

In this case, as in *Williams,* this court is presented with an example of discrimination between different groups or classifications of convicted criminal defendants—those who are poor and those who are not—or, to put it another way, of discrimination based upon poverty.

Therefore, the instant case involves "suspect classifications" which must be reviewed and evaluated under the stricter standards mentioned in *Skinner v. Oklahoma, supra.* See also *Shapiro v. Thompson,* 390 U.S. 618, 638 (1969); *Sherbert v. Verner,* 374 U.S. 398, 406 (1963).

We next turn to whether imprisonment of an indigent convicted defendant for non payment of a fine is "necessary to

promote a compelling government interest, * * *." *Shapiro v. Thompson, supra,* 394 U.S. at p. 634.

Assuming that the state's interest in the collection of fines and in the reformation and rehabilitation of convicted defendants is "substantial and legitimate" as in *Williams v. Illinois, supra,* the crucial question is whether the practice of imprisoning indigent convicted defendants is necessary to promote either of these interests.

First it would seem absurd that imprisonment can serve the end of enforcing collection of the fine at all in the case before this court. Proper use of imprisonment as a coersive mechanism presupposes an ability to pay. In the instant case we deal with the application of the practice to indigents. Therefore, as applied to indigents, one fails to see how either the threat or the actuality of imprisonment can force a man who is without funds, to pay a fine. *Morris v. Schoonfield, supra,* 301 F. Supp. 158, 163, vacated on other grounds, 399 U.S. 508.

Also since this Court in *Williams* pointed out that the state has available to it alternative procedures for collecting fines, one must conclude that imprisonment of indigents is not necessary to promote this state interest. *Williams v. Illinois, supra,* fn. 21.

Finally is imprisonment permissible because it serves the State's interest in the rehabilitation and reformation of indigent offenders? The argument for imprisonment of an indigent offender whould be that it impresses upon him his responsibility to the county for his criminal behavior. It does not follow, however, that the mere equating of the imprisonment of the indigent who cannot pay a fine with the cash payment of the nonindigent who can, to the end of promoting the rehabilitation of both classes of offenders, compels the conclusion that the treatment of the former is constitu-

tionally permissible. By using alternative methods, and by requiring compliance on the part of an indigent offender with onerous conditions, this should serve to make him aware of his responsibility for his criminal conduct and to encourage him to become a law-abiding citizen.

In summary, the record before this Court shows beyond any contradiction that the petitioners were granted probation and that they were unable to pay their fines and their probation was revoked solely because of their indigency. They incurred imprisonment, not because they refused to comply with the conditions of probation, but simply because they were unable to do so. Although the trial judge had apparently determined that a proper punishment for their offenses did not require incarceration, the petitioners were unable to obtain their freedom only because they were poor.

The inescapable conclusion is that petitioners' probation was revoked due to the inability to pay the fines imposed, and that the imprisonment was not necessary to promote any state interest, and constituted an invidious discrimination based on their poverty in violation of the equal protection clause of the Fourteenth Amendments.

CONCLUSION

In view of the foregoing, petitioners respectfully urge the Court to reverse the decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, GLENN ZELL, hereby certify that I have duly served a copy of the foregoing Brief of Petitioners on Hon. Arthur Bolton, Attorney General of Georgia, by placing same in the U.S. Mail properly addressed with adequate postage affixed.

This 22 day of July, 1980.

s/Glenn Zell
GLENN ZELL

Supreme Court, U. S.
FILED
SEP 11 1980
MICHAEL RODAK, JR., CLERK

No. 79-6027

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

RAYMOND WOOD, EDNA ALLEN AND JAMES TANTE,

Petitioners,

v.

THE STATE OF GEORGIA,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

BRIEF FOR RESPONDENT

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QUESTIONS PRESENTED

1. In cases arising in the criminal justice system, should lack of wealth be a suspect classification for purposes of equal protection analysis?

2. May a trial judge who has made a determination that probation is the pertinent punishment for one convicted of a crime, later revoke that probation for the nonpayment of a fine which was to have been paid in installments during the period of probation when during that period no payments are made, nor has the offender made any effort to comply with this term of his probation?

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BRIEF OF RESPONDENT, THE STATE OF GEORGIA ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

OPINION BELOW

The opinion of the Court of Appeals of Georgia is reported at 150 Ga. App. 582, 258 S.E.2d 171 (1979).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution:

> No State shall . . . deny any person within its jurisdiction the equal protection of the laws.

It also involves the following provisions of state law (unofficially codified as):

> Ga. Code Ann. § 27-2709 (1978 Rev.): [Statewide Probation Act]; jurisdiction

of courts; procedure; hearings; reference to circuit probation supervisor; period of probation; disposition of prisoner pending hearing; payment of fines or costs as condition precedent to probation.

* * * *

If it appears to [the] court upon a hearing of the matter that the defendant is not likely to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court in its discretion shall impose sentence upon such defendant but may stay and suspend the execution of such sentence or any portion thereof, and may place him upon probation under the supervision and control of the circuit probation supervisor for the duration of such probation.

* * * *

The court may, in its discretion, require the payment of a fine or costs or both as a condition precedent to probation.

Ga. Code Ann. § 27-2901 (1978 Rev.): Time of payment of fines.

Every fine imposed by the court under the authority of this Code shall be paid immediately or within such reasonable time as the court may grant.

STATEMENT OF THE CASE

Petitioners were placed on probation under Georgia's Statewide Probation Act, Ga. Code Ann. § 27-2709 following their convictions under the State's obscenity statute. Ga. Code Ann. § 26-2101. The convictions of Petitioners Edna Allen and James Tante arose in connection with their employment at a movie theater in Atlanta, Georgia, which showed films which were found to be obscene in violation of the State's obscenity laws. The convictions of Petitioners Allen and Tante were affirmed by the Court of Appeals of Georgia. Allen, et al. v. State, 144 Ga. App. 233, 240 S.E.2d 754 (1977). Petitioner Wood was convicted for distributing obscene materials under the same Georgia statute, and his conviction was likewise affirmed by the Court of Appeals of Georgia. Wood v. State, 144 Ga. App. 236, 240 S.E.2d 743 (1977).

Petitioner Wood was sentenced to a $5,000.00 fine on each of two counts charging him with distributing obscene material, and placed on twelve months probation on each count, with both counts to run consecutively. (Appendix 23-25). Allen and Tante were sentenced to a $5,000.00 fine and twelve months on probation. (Appendix 17-22).

The sentences of all three Petitioners were imposed on October 23, 1978. (Appendix 19, 22, 25). The above mentioned fines were to be paid on an installment basis, by making payment to the Fulton County Probation Office at the rate of $500.00 per month for ten months by each Petitioner. (Appendix 18, 21, 24). Some two and one-half months after Petitioners were placed on probation petitions for the revocation of their probation were filed by their probation officers with the court due to the failure of each Petitioner to comply

with that aspect of their condition of probation to pay monthly installments of $500.00 as set forth in the trial court's orders of October 23, 1978. (Appendix 26-31). On January 26, 1979, a hearing was held pursuant to the revocation petitions which had been filed by the probation officers against Petitioners. There does not seem to be any dispute amongst the Petitioners that their period of probation commenced on October 23, 1978.

At the probation revocation hearing, it was established that each Petitioner had not only failed to make the full $500.00 monthly payments as required by the court's orders of probation, but had failed to pay anything at all on the fines. (T. 3, 30, 32, 48, 49). The reason brought out by each Petitioner as to their failure to pay anything at all was not so much their alleged

indigency, but rather their reliance on the promise of the "Adult Entertainment" establishments for which they had been employed to pay the fines for them. (T. 4, 13, 14, 16, 31, 33, 35, 62). Each Petitioner gave testimony which indicated that when they were hired they were told by their employers that any fines which might be adjudged against them would be taken care of in connection with any litigation growing out of their employment. (T. 4, 13, 41, 43, 62). Undoubtedly, during the sentencing Petitioners did not protest their fines or probation which was imposed upon them because they thought that the organizations they were employed by would pay their fines.[1/]

1/ Before Petitioners were sentenced in this case they were again convicted on obscenity charges growing out of convictions from their employment with the same employers from whom the present set of circumstances arises. In those cases the fines were paid by the employers in accordance with the expectancy and assurances that fines and other costs of litigation would be paid in those matters, and were in fact paid by the attorney who represents the Petitioners in this matter. (T. 12, 41, 51, 57).

At the probation revocation proceedings the court heard testimony from the probation officers of the respective Petitioners which established that none of the Petitioners had paid the required $500.00 per month, nor had they paid any money to the probation office at all. None of the Petitioners sought any modification of the probation order to reduce the fine, nor did they at the time the sentence of fine and probation was pronounced cause there to be entered any objection or make any comments to the court that they would not be able to pay the fine. Neither have the Petitioners established that they are indigent, but rather gave testimony that their income was not sufficient to meet the monthly payments. (T. 10, 37, 55).

On February 8, 1979, the State Court of Fulton County entered orders as to each

Petitioner which provided that each Petitioner had until February 13, 1979, to pay the arrearage, and upon failure to do so because of a change in condition probation would be revoked, and was in fact revoked. (Appendix 32-34). Petitioners' lawyer on February 12, 1979, then sought to modify the conditions of the probation orders, but this was denied by the court. (Appendix 35-37). Petitioners failed to pay the arrearages. Confinement resulted.

SUMMARY OF THE ARGUMENT

The initial issue which must be explored in this equal protection case, arising in the criminal justice system, is whether being economically disadvantaged constitutes a "suspect" class. Such an examination is necessary, since if lack of wealth is "suspect," a strict standard of judicial scrutiny is employed; if lack of wealth is not a "suspect" classification, then the state action in question will pass constitutional scrutiny if it is rationally related to the achievement of a legitimate state policy. Compare, McLaughlin v. Florida, 397 U.S. 184 (1964) with McGowan v. Maryland, 366 U.S. 420 (1961).

Financial need has never been labeled "suspect" in cases that do not originate in the criminal justice system, and the reasons why financial need should not identify a "suspect" class for equal protection purposes

in the non-criminal justice context are just as persuasive as those cases arising in the criminal justice system. Most importantly, in examining those equal protection cases which have their genesis in criminal law we find that they are closely examined, with the traditional test of rationality being employed in cases that may be broadly grouped in terms of adequacy of judicial review, e.g., Griffin v. Illinois, 351 U.S. 12 (1956), cost recoupment, e.g., Rinaldi v. Yeager, 384 U.S. 305 (1966) and fines, e.g., Williams v. Illinois 399 U.S. 235 (1970). The same analysis is applicable in this case.

Subjecting the sentences in this case to the test of whether the classification drawn - admittedly made in the exercise of individualized sentencing discretion - is

rationally related to the achievement of permissible state policy, these cases do not offend the Equal Protection Clause. Financial resources which might be available to a defendant to and including looking to individuals in a community from whom those financial resources might be available is one relevant factor which a trial court may use in determining whether the individual is an acceptable risk for probation. The question of financial resources of a defendant may or may not be a factor in certain cases, as in other cases it may be important to the sentencing judge as he considers his sentencing alternatives. Permitting a trial judge in an appropriate case to weigh the factor of whether a sentence should be probated, and on what conditions, furthers two important state interests, namely the broad sentencing discretion necessary for

an effective criminal justice system which in turn, aids the efficacy of a criminal justice subsystem - probation - which to be fully effective, must have a broad base of public support.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-6027

RAYMOND WOOD, EDNA ALLEN AND JAMES TANTE,

Petitioners,

v.

THE STATE OF GEORGIA,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

ARGUMENT

1.

ECONOMIC DISADVANTAGE HAS NOT BEEN ACCEPTED AS A SUSPECT CLASS FOR PURPOSES OF EQUAL PROTECTION ANALYSIS IN AREAS OF THE LAW ARISING OUTSIDE THE ADMINISTRATION OF CRIMINAL JUSTICE.

The Equal Protection Clause has always been thought to allow differences in treatment,

even with some resulting in inequality, so long as the state's purpose can be rationally justified. McGowan v. Maryland, 366 U.S. 420, 425 (1961). Petitioners recognize that equal protection does not require "absolute equality." See brief of Petitioners at page 8. Consequently, absent invidious discrimination, a rationally based classification does not run afoul of the Equal Protection Clause. Massachusetts Board of Retirement v. Murgia, 427 U.S. 207 (1976); Dandridge v. Williams, 397 U.S. 471, 485 (1970); Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955). This Court has recognized that absent invidious discrimination, and where the state has a rationally based purpose the fact that its action impacts more heavily on individuals who are not members of a suspect class does not prove a discriminatory purpose or intent in the application of a state statute or

procedure. See Arlington Heights v. Metro Housing, 429 U.S. 252, 266 (1977); Washington v. Davis, 426 U.S. 229 (1976).

Petitioners' argument to this Court is that poverty is a suspect classification, and therefore the imprisonment of them for failure to pay the fines which were a condition of their probation should be subjected to strict judicial scrutiny. See brief of Petitioners, pp. 9-10. A suspect class, for the purposes of equal protection analysis, is one saddled with such disabilities as to be subjected to a history of purposeful unequal treatment or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process. Massachusetts Board of Retirement v. Murgin, 427 U.S. 307, 313 (1976). While this Court has viewed certain classifications as "inherently suspect," examining such "suspect"

classifications with close judicial scrutiny such as race, McLaughlin v. Florida, 379 U.S. 184 (1964), nationality, Loving v. Virginia, 388 U.S. 1, 9 (1967), and alienage, Graham v. Richardson, 403 U.S. 365 (1971), economic disadvantage by itself has not been identified as a suspect classification for the purposes of equal protection examination. Maher v. Roe, 432 U.S. 461, 471 (1977); San Antonio School District v. Rodriguez, 411 U.S. 1, 29 (1973); Dandridge v. Williams, supra, 397 U.S. at 484-485.

Petitioners make the assumption that financial need or ability have already been labeled by this Court as a "suspect" class when it comes to the administration of criminal justice, relying upon Griffin v. Illinois, 351 U.S. 12 (1956). See brief for Petitioners at p. 8.

While those who are economically disadvantaged may be confronted with an imposing

wall of finances which keeps them from the life style which they might aspire to, and while the fact that their financial resources are less than those of the more affluent individuals in society and therefore causes them to undergo greater economic hardship, these alone do not constitute a violation of the Equal Protection Clause. In fact, government regulations sometime present a financial difficulty for the economically disadvantaged who seek to take advantage of a benefit or service by which those who are financially well off can easily pay, and yet prepayment of certain fees can be exacted from all individuals regardless of their financial status. /2 This Court has

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2/ Prepayment of fees for those who seek to file a bankruptcy petition, United States v. Kras, 409 U.S. 434 (1973), and filing of appeals through a higher court in a civil proceeding. Ortwein v. Schwab, 410 U.S. 656 (1973).

found that states need not fund abortions for indigent women simply because child birth is funded, Maher v. Roe, supra, nor must a state in its educational system require precisely equal per pupil expenditures between the affluent and less affluent school districts, San Antonio School District v. Rodriguez, supra, nor must it provide additional money because a welfare recipient has more children than the maximum number for which welfare payments can be made. Dandridge v. Williams, supra. Thus, it can be seen that the fact that there is an impact on those of less financial affluency does not render financial ability, i.e., poverty, a suspect classification for the purposes of equal protection. See Arlington Heights v. Metro Housing, supra.

Petitioners have correctly pointed out that the decisions above have arisen in the area of "economics and social welfare."

See brief of Petitioner at page 7.

Similar to the cases which arise in a social welfare-economic context where "the equal protection clause does not require absolute equality or precisely equal advantages," San Antonio Independent School District v. Rodriguez, 411 U.S. at 24, likewise in the criminal justice area a state need not "duplicate the legal arsenal that may be privately retained by a criminal defendant. . . ." Ross v. Moffitt, 417 U.S. 600, 616 (1974). Likewise, while an individual of less means is entitled to court appointed counsel, the court is under no duty to retain a high priced attorney. Griffin v. Illinois, supra, 351 U.S. at 23 (Frankfurter, J., concurring).

While this Court has not been insensitive to those who are economically disadvantaged, in none of the cases in which

the equal protection clause has been applied has the Court identified indigency as a "suspect class." What this Court has done is examine state statutes and practices which place the indigent at a disadvantage in the criminal justice process, invalidating those procedures where there has been no rational basis for the state's action. This Court in the criminal justice area following conviction, has provided indigent defendants with the right of a free transcript to review their criminal conviction[3/] and assistance of counsel on direct appeal.[4/]

As noted by this Court in Smith v. Bennett, 365 U.S. 708 (1961), a case concerning the requirement of the payment of a filing fee before a habeas corpus petition

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3/ Griffin v. Illinois, 351 U.S. 12 (1956).

4/ Douglas v. California, 372 U.S. 353 (1963).

could be filed, the thrust of Griffin, was the lack of a rational basis in statutes implicitly assuming that an indigent's efforts to have his case reviewed were less meritorious than the efforts of other defendants. Id. at 710. Consequently, decisions by this Court striking down statutes that required the payment of a filing fee before an indigent can seek appellate review, Burns v. Ohio, 360 U.S. 252 (1959), and the paying of a fee before the filing of a habeas corpus petition, Smith v. Bennett, supra, are decisions which hold that state practices and procedures which place an insurmountable obstacle between the indigent defendant and his ability to secure a review of his conviction, a matter which would be otherwise available to a person with money, are irrational, and thus, offensive under the Equal Protection Clause. However, more importantly, for the

purposes of this matter is the fact that indigency in and of itself has never been viewed as "suspect;" the test has been and should continue to be "a rational basis" and not "strict judicial scrutiny."

In Berman v. United States, 302 U.S. 211 (1937), poverty in the probation context was not held to be deserving of heightened judicial scrutiny.

> Probation is concerned with rehabilitation, not with the determination of guilt. It does not secure reconsideration of issues that have been determined or change the judgment that has been rendered. Probation or suspension of sentence 'comes as an act of grace to one convicted of a crime.' Escoe v. Zerbst, 295 U.S. 490, 492, 493. The considerations it involves are entirely apart from any re-examination of the merits of the litigation. Probation was designed 'to aid the rehabilitation of a pertinent offender; to take advantage of

> an opportunity for reformation which actual service of the suspended sentence might make less probable.' Thus probation cannot be demanded as a right. The defendant stands convicted; he faces punishment and cannot insist on terms or strike a bargain. Id. at 220.

Consequently, while Griffin v. Illinois, supra, stands for the application of a heightened degree of scrutiny in matters relating to a defendant's effective access to review the findings of criminal guilt, the review of a matter of probation and the payment of a fine and the later incarceration because of failing to meet a condition of probation does not involve any "fundamental interest" which deserves heightened judicial scrutiny.

In those cases involving equal protection in terms of state statutes seeking to recover costs[5/] and fines[6/] the Court has applied

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5/ Rinaldi v. Yeager, 384 U.S. 305 (1966).

6/ Tate v. Short, 401 U.S. 395 (1971).

the rational basis test and not a test of strict judicial scrutiny. Again, indigency has never been viewed as suspect so as to invoke the latter doctrine.

The cases in which the Petitioners place heavy reliance - Tate v. Short, 401 U.S. 395 (1971, Morris v. Schoonfield, 399 U.S. 508 (1970), and Williams v. Illinois, 399 U.S. 235 (1970) - also do not view indigency as necessarily suspect for purposes of equal protection analysis. Rather the Court has examined the rationality of the statutory schemes in accordance with the objectives of the statutory plans.

In Williams v. Illinois, supra, the court examined a statutory scheme which allowed the imprisonment of defendants beyond the state statutory maximums for

their respective offenses because the fines were converted into days of incarceration at the rate of $5.00 per day. Id. at 236. The Court struck down the practice holding that it created one maximum punishment for those who could afford the fine but a greater maximum penalty for the poor. Id. at 240-241, 243. The Court in Tate v. Short, 401 U.S. 395 (1971), struck down a procedure which substituted jail time for an unpaid fine, even though jail time could not have been imposed for the charge of which the defendant had been found guilty. Again rationality was found wanting. In Morris v. Schoonfield, supra, imprisonment of an indigent defendant who could not immediately pay a fine could not be converted into a period of imprisonment because of indigency. Both Williams, supra and Tate, supra, addressed factual situations in which criminal defendants were punished

beyond the state statutory maximums for their respective offenses solely because of their inability to pay fines. The present case does not involve or even remotely involve similar facts. Sub judice, the revocation of Petitioners' probated sentences does not punish them beyond the statutory maximum.

To date the Court has made it clear that economic disadvantage has not been accepted as a "suspect class" for purposes of equal protection analysis in areas of law arising outside the administration of criminal justice and as such economic status in itself has not been found to be sufficient to engage strict judicial scrutiny in criminal cases.

Petitioners have offered no reason why economic status should be deemed "suspect" in criminal law and related matters, but

merely assume that economic status is already suspect. None of the indicia of suspectness in cases previously decided by the Court such as immutability of classification or the existence of stereotyping are present. Poverty, unlike race, is certainly not an immutable characteristic. Neither is poverty in the probation context based on prejudicial stereotyping, but is a factor which may be legitimately examined in considering and assessing the risk involved in granting probation to a given defendant, but more will be said in that regard later. In deciding whether the sentence imposed on the Petitioners in this case is permissible under the Equal Protection Clause, the test should be the traditional one of rationality and not that of strict judicial scrutiny.

II

THE FINANCIAL RESOURCES AVAILABLE TO DEFENDANTS IS ONE RELEVANT FACTOR IN DETERMINING WHETHER THEY ARE A GOOD RISK FOR PROBATION. PERMITTING A TRIAL JUDGE TO WEIGH THIS FACTOR IN DETERMINING WHETHER PROBATION WOULD BE APPROPRIATE, AND ON WHAT CONDITIONS, FURTHERS THE BROAD SENTENCING DISCRETION NECESSARY FOR AN EFFECTIVE CRIMINAL JUSTICE SYSTEM AND FURTHER AIDS THE EFFICACY OF A PROBATION SYSTEM WHICH, TO BE FULLY EFFECTIVE, MUST HAVE A BROAD BASE OF PUBLIC SUPPORT.

Turning now to the sentencing phase, it is important to remember that the present case does not involve imprisonment for the immediate failure to pay a fine, Tate v. Short, supra, or imprisonment beyond the

statutory maximum as a penalty for the failure to pay a fine. Williams v. Illinois, supra. Petitioners are not being held beyond the statutory maximum penalty, but rather, their basic claim is that they have a right to probation. Having been duly convicted by a jury, and having had their convictions reviewed, any liberty interest which the Petitioners may have has been extinguished. Meachum v. Fanno, 427 U.S. 215, 224 (1976). At issue here is an examination of the sentencing function of a trial judge. The importance of the sentencing function cannot be overemphasized, since this is the area by which the public judges the success or failure of the criminal justice system, for it is here that they see the results of that system. The matter of whether the sentence is too short, too long, or the wrong type may later cause the criminal defendant to repeat his criminal endeavors, lead to new criminal offenses, or result in others committing criminal offenses

because they see that the punishments which have been meted out in the past have not outweighed the gain which they perceive they have received from their criminal escapade. If the public perceives that there are no sanctions for individuals who violate the terms and conditions of probation then obviously the public will view probation as a useless sentencing alternative. Similarly, a court if it is unable to enforce any violations of the conditions which it attaches to probation may draw the conclusion that probation is no longer a useful rehabilitative alternative.

The concept that sentencing should fit the individual and the crime is recognized in Williams v. New York, 337 U.S. 241 (1949), wherein the Court approved for sentencing purposes the evaluation of data pertaining to the defendant that would be inadmissible

on the question of guilt or innocence. Not only should the sentencing judge be provided with broad discretion in considering various sentencing alternatives, in those areas where the jurors do sentencing similar discretion must be afforded to them.[7/]

In deciding upon an appropriate sentence for one convicted of a crime there are many factors which the trial judge must weigh, and sometimes he is placed in a dilemma when weighing all those factors in attempting to arrive at an intelligent exercise of the discretion which has been placed in the judge by virtue of his office. Social factors such as family history, educational achievement,

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7/ See Green v. Georgia, 442 U.S. 95 (1979); Lockett v. Ohio, 438 U.S. 586 (1978); Hawes v. State, 240 Ga. 327, 238 S.E. 2d 418 (1977); Fleming v. State, 240 Ga. 142, 240 S.E.2d 828 (1977).

employment opportunities, ties with the community, nature of the crime, and the record of the offender are all matters which the trial judge takes into consideration. That is not to say that the trial judge may not consider other factors which he deems appropriate to determining whether a non-penal disposition is appropriate and the chances of its success. The fact that the Petitioners were all older citizens, and the fact that they had previously in regard to a guilty plea been placed on probation and assessed a fine probably prompted the trial judge to consider probation in this instance.

In considering probation the trial judge must reach some conclusion as to whether the defendants are a good risk. In assessing risk prior criminal history should be examined to indicate whether the offender has in the past given any indication

that probation would not be successful. The judge may also consider family and family support. In every case the judge must ask the question of whether the offender can succeed on probation. Ultimately, only the defendant can ensure a successful probation, for in the end that is the offender's responsibility.

When a defendant and those individuals who are interested in a defendant's welfare directly participate in ensuring the success of probation and thus avoiding imprisonment, that responsibility is increased. The employment potential of the probationer provides the sentencing judge with some assurance that the offender has an added stake in the success of probation. A fine sometimes accomplishes the same purpose.

Regardless of whether the fine is paid in advance or on the installment plan, it provides an assurance to the sentencing judge that the potential probationer will have a greater responsibility in conforming his conduct to the law. Naturally, the fear of revocation and possible imprisonment has an immediate impact on the probationer, and may serve as a curb to overcome any temptation to violate the terms and conditions of probation. The payment of a fine provides a probationer with a heightened interest in the success of his probation.

The court may also legitimately consider the offender's ability to pay the fine, and may consider offers of payment from family members, or from the offender's employer. In this instance, there is testimony that the Petitioners' employers had in the past paid such fines, which can be viewed by the trial court as an indication that the

employers of the Petitioners had an interest in the Petitioners as continued employees and that these businesses would seek to confrom their activities to the law in the future rather than risk the loss of their investment in the success of the Petitioners' probation. Such a willingness by third parties to pay a fine indicates that the Petitioners had the support of others as they attempted to become law abiding citizens. Payment of a fine by an employer is similar to payment of a fine by family members or friends. Such support is clearly an important consideration in assessing the probability of a given probationer's success.

When the assurances that prompt a trial judge to impose a conditionally probated sentence do not materialize, the factors which determine the probation-worthiness of the offender are no longer present.

Consequently, the basis of the judge's decision to grant probation has been materially altered and must be reassessed. When the assuring factors which were present when the judge imposed probation fail to materialize the defendant thus becomes a poor risk for probation. When the conditions surrounding the reassuring factors to insure success on probation cannot be satisfied, the probation does not become effective and the sentence must be served. Petitioners did not seek a modification of the terms and conditions of probation until after the court had held the hearing on the probation officer's petition to revoke probation.[8/] It was not until some two and

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8/ Georgia permits the sentencing judge to modify the terms and conditions at any time during the term of the sentence which has been probated. Ga. Code Ann. § 27-2709 (1978 Rev.).

one-half weeks after the revocation hearing that Petitioners sought to modify the conditions of probation. (Appendix 35-36).

Generally the availability of financial resources to a criminal defendant is not a controlling factor in terms of whether the individual is a good risk for probation. It is the nature of the crime and the record of the offender that is crucial. However, such as in this case, the availability of financial resources is certainly an important factor; it is a rational factor.

The sentencing discretion provided to trial judges should not be limited. The availability of financial resources to the offender plays an appropriate role in the exercise of that discretion. The presence or existence of economic resources will play a minor, if not nonexistent, role in many cases but in some few cases it plays an important role. Restrictions of the

sentencing discretion given to trial judges should not as a general rule be applauded. In this case restrictions on sentencing serve only to frustrate the state's interest in maintaining an effective criminal justice system.

The mere possibility that some judges will abuse the discretion with which they are entrusted should not be a sufficient basis to limit the discretion of all judges.[9/] Cf., Williams v. New York, 337 U.S. 241, 251-252 (1949). The consequences of limiting a judge's sentencing discretion are unthinkable. If a judge cannot impose a period of probation because he has no means of enforcing violations of probation then many defendants

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9/ To curb any abuses which may occur during sentencing, the General Assembly of Georgia has adopted a Sentence Review Panel to review all sentences of five years or more for harshness. Ga. Code Ann. § 27-2511.1 (1978 Rev.).

would find themselves incarcerated without the opportunity to demonstrate their probation-worthiness by putting up a financial stake. Cf., Tate v. Short, 401 U.S. 395, 401 (1971); (Blackmun, J. concurring).

The Supreme Court of Georgia in Hunter v. Dean, 240 Ga. 214, 239 S.E.2d 791 (1977), certiorari improvidently granted, 439 U.S. 281 (1978), recognized that assurance of third party help is a rational factor for a trial judge to consider in determining probation. Id. at p. 218. See also Calhoun v. Couch, 232 Ga. 467,207 S.E.2d 455 (1974).

The use of installment plans for the payment of a fine was recognized in Williams v. Illinois, 399 U.S. 235, 245 n. 21 (1970). In Williams, supra, the Court cited with approval statutes in California, Michigan and Pennsylvania. The California statute permitted the payment of a fine in installments

with imprisonment in the event of default, but for no longer than the maximum term for which the defendant might have been sentenced. [10/] Id. at p. 247.

The Court further went on to say in Williams, supra, that a state cannot fail to enforce fines against indigents because to do so would amount to "inverse discrimination." Id. at p. 244.

Public perception of the success or failure of the criminal justice system is a direct result of the exercising of the sentencing function vested in the trial judge. Permitting the judge to have wide sentencing discretion in terms of conditional releases such as probation, restitution and other post-conviction sentencing alternatives must have a broad base of public support. Recognition that the public has a keen

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10/ Cal. Pen. Code Sec. 1205 (1968).

interest in and awareness of the effectiveness of the criminal justice system was evidenced in this Court's 1976 opinions concerning capital punishment. Cf., Gregg v. Georgia, 428 U.S. 153, 179-180 (1976) (plurality opinion); Roberts v. Louisiana, 428 U.S. 325, 352-353 (1976) (White J., dissenting). Sentencing alternatives which do not provide for incarceration are particularly susceptable to public scrutiny, and when those alternatives are viewed as ineffective the public reacts in seeking a legislative termination to such programs.

As the rate of crime continues to spiral many states have found themselves confronted with the decision as to whether mandatory sentencing procedures should be invoked. In the last four years the movement towards mandatory sentencing has increased, with the General Assembly of Georgia this year adding two mandatory enactments, in addition to its earlier providing for mandatory sentences for certain crimes in 1977 and

1976. Ga. Code Ann. § 79A-811 (1978 Rev.) [controlled substances], Ga. Code Ann. § 26-1902(a)(b) (1977 Rev.) [minimum penalty for armed robbery, with the Legislature precluding any suspension or probation of sentence] and Ga. Code Ann. § 26-1601 (1977 Rev.) [mandatory minimum sentence for second conviction for burglary which precludes the sentence being suspended or probated]. See also Rummell v. Estelle, ___ U.S. ___, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980).

Maintaining public confidence in Georgia's Statewide Probation Act is one of utmost importance if the State is to achieve another legitimate objective, the rehabilitation and punishment of offenders outside the confines of a penal institution.

The Constitution does not empower the second-guessing of judicial officials with the difficult task which trial judges face in enforcing the State's criminal laws, even where the impact may result in a period of incarceration for one who was given an earlier act of grace by being placed on probation, but because of a change in a factor which was used by the trial judge in placing the individual on probation that person later became incarcerated for a period not exceeding the statutory maximum penalty for that offense.

CONCLUSION

As noted earlier, indigency or poverty is not a "suspect" classification for equal protection analysis. Further, it appears that Petitioners concede the validity of the statutes authorizing probated sentences conditioned upon the payment of a fine. See Ga. Code Ann. §§ 27-2529, 27-2709, 27-2901 (1978 Rev.). Petitioners' contention is simply that as applied, they deny them equal protection of the law.

Respondent has shown that in some circumstances it is necessary for a sentencing judge to assess the financial resources available to an offender to ensure that the offender is a good risk for probation. Examining resource availability furthers the undeniable rational and legitimate state interest in investing trial judges with a broad sentencing discretion. Consideration that

payment will be made by a third party strengthens the probability of an offender's chances for successfully completing probation, since it demonstrates third party support to ensure that the probationer will have a successful period of probation. Particularly when an employer is the source of the fine additional likelihood of success is heightened because the individual has employment which indicates that the probationer will be able to support themselves, and in this case it is also an indication that the employer has a continued interest in the employee and wishes to ensure that his future conduct conforms to the law when earlier conduct led to the employee's conviction, for to do otherwise would mean that the employer would be risking the loss of the investment and the success of the petitioner's continued probation.

In assuring trial judges a broad sentencing discretion it promotes another rational and legitimate state interest - maintaining public confidences in the viability of a conditional release system.

The relationship between any classifications drawn and the purpose for which they are drawn is clear and rational, and under the traditional equal protection analysis applicable to this case, the Equal Protection Clause has not been offended. Consequently, the judgment of the Court of Appeals of Georgia should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, JOHN W. DUNSMORE, JR., Attorney of Record for the Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the Rules of the Supreme Court of the United States, I have served the foregoing Brief for Respondent on the Petitioner by depositing a copies of same in the United States mail, with first class postage, prepaid, addressed to Counsel of Record at the following post office address:

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This 10th day of September, 1980.

/s/
JOHN W. DUNSMORE, JR.